

Part B – The unbundled tariff

Contents

Section		Page
7	Introduction to Part B	89
8	Adopting the Unbundled Tariff	92
9	Design of the Unbundled Tariff	113
10	Implementation of the Unbundled Tariff	141

Part B - Section 7

Introduction to Part B

- 7.1 In this part of the document, we set out our provisional decision to adopt the unbundled tariff for the 084, 087, 09 and 118 number ranges. This decision is provisional on the issues on which we are consulting which are set out in Section 2.
- 7.2 We have first briefly summarised the relevant number ranges under consideration before setting out the structure of this part of the document.¹

Number ranges

The 03 number range

- 7.3 The 03 number range was introduced in 2007. It is designed to offer SPs a non-geographic number with national access to their services at call prices which are the same as geographic calls (with callers also being able to use their in-bundle minutes when calling these numbers).
- 7.4 In the April 2012 consultation we decided to retain the current regulatory structure for 03 numbers.² We noted that there was demand for a non-geographic number range which was charged at a geographic rate and 03 was already set up to meet this purpose. We acknowledged that consumers' awareness of the range was low but we considered that it could be enhanced as part of the wider reform of non-geographic numbers, in particular by including it in any future consumer awareness and information campaign following the implementation of other changes.³ This remains our intention for this range and therefore we do not discuss it further in this part of the document.

The 0843/4 ranges

- 7.5 These ranges were opened up for allocation in 2000 and are designated in the Numbering Plan as 'Special Services basic rate: charged at up to and including 4.26p per minute or per call for BT customers'.⁴ The ranges are used to provide access to a wide variety of services such as pre and post sales enquiry lines, customer support lines and information lines. They are heavily used, generating 5.5bn calls in 2009.⁵

The 0845 range

- 7.6 This range is the second most heavily used non-geographic number range after 080.⁶ The 0845 range has existed for much longer than other 084 ranges. It was established as a range which was pegged to BT's 'local' call rate. While a local rate

¹ Note that additional background on the non-geographic calls market and these number ranges is provided in Section 2.

² See paragraphs 11.19 to 11.61 in Part B of the April 2012 consultation.

³ In response to the April 2012 consultation no stakeholders indicated disagreement with this position. UKCTA noted its support (p.10 of its April 2012 consultation response). The DMA also indicated support but noted that the range needed to be more clearly advertised and promoted (p.3 of the DMA's April 2012 consultation response).

⁴ <http://www.ofcom.org.uk/static/archive/oftel/publications/1999/consumer/nts1299.htm>

⁵ 2010 Flow of Funds study, p.31.

⁶ 2010 Flow of Funds study, p.31.

still exists in some BT tariff packages, public understanding of this concept has diminished and been subsumed within the concept of geographic call rates (that is, local and national calls are treated the same), though the specific definition of the rate in the Numbering Plan has not changed. The cost of calling this range from different networks varies widely, including frequent inclusion in call bundles.

- 7.7 Revenue-sharing remains possible on the range. BT has increased the level of discounts it applies to the range (for example in January 2009 BT started to offer retail packages that included free inclusive calls to 0845 numbers⁷) and this has led to reduced termination payments to TCPs and either reduced, or no revenue being passed to SPs.

The 0870 range

- 7.8 Following a review in 2009, we set out a position that this range should be charged at geographic rates and included within bundles.⁸ Unlike the 03 range, this is not a regulatory requirement: OCPs are able to charge higher prices for calls to 0870 numbers, as long as they make the prices clear in all their advertising and promotional materials. The regulatory support for revenue-sharing on the range was also removed following the same review. After we set out this new position, many SPs moved to use other ranges, however, many SPs remain on this range, albeit that they may not be receiving revenue-share from calls.

The 0871/2/3 ranges

- 7.9 These ranges are designated in the Numbering Plan as “Special Services higher rate: charged at up to and including 8.51p per minute or per call for BT customers”. They are therefore the most expensive 08 numbers and are often used to provide micro-payment mechanisms for services on the range. In 2009, because of concerns about pricing transparency for calls to these numbers, and to improve consumer protection from potential scams, we extended the Premium Rate Service (‘PRS’) condition to include these number ranges. As a result, PhonepayPlus (‘PPP’) is now responsible for the day-to-day regulation of these numbers.

The 09 range

- 7.10 This range is designed for the provision of PRS, which are typically charged at higher rates than calls to 08 ranges. Call prices for BT customers are limited to £1.53 per minute or per call (including VAT). Services on the 09 range, which is also regulated by PPP include entertainment, chat and adult services.

The 118 range

- 7.11 Directory enquiry (‘DQ’) services are provided on 118 numbers. Retail prices for DQ services are not regulated, although the services on the 118 range are covered by PPP’s Code of Practice. There are more than 400 DQ services listed by BT. There are two main services in the market (118 118, operated by the Number UK, and 118 500 operated by BT), which together represent more than 80% of supply by revenue.⁹

⁷ <http://www.guardian.co.uk/money/2009/jan/08/bt-customers-premium-rate-phonecalls>

⁸ Ofcom, *Changes to 0870 statement*, 23 April 2009, available at: <http://stakeholders.ofcom.org.uk/consultations/0870calls/statement/>

⁹ 2010 PPP Report, p.44.

Structure of Part B

7.12 The Sections and Annexes in this part of the document set out the decisions we are minded to take on changes to the structure of the above number ranges as well as the reasons and evidence to support those decisions. These decisions are subject to final confirmation in light of responses to, and our conclusions on, the issues on which we are consulting as part of this document (see Section 2, paragraph 2.53 for further details). This includes:

- our estimates of the billing costs of implementing the unbundled tariff (see paragraphs A10.30 to A10.47 in Annex 10); and
- our quantified impact assessment of the benefits of the unbundled tariff for the 09 range (see paragraphs A11.82 to A11.135 in Annex 11).

7.13 The structure of this part of the document is as follows:

- Section 8 sets out our overall decision to implement the unbundled tariff structure, as well as our decision to include the 0845 and 0870 number ranges within that structure. Annex 19 sets out stakeholder comments, as well as our response, on these issues.
- Section 9 sets out our decisions in relation to the design of the unbundled tariff, in particular the access charge ('AC') and service charge ('SC') elements. This includes our decision on the SC cap for the 09 number range. In addition we also set out our decision on the assumed point of handover and transit arrangements. Annexes 20 to 23 detail stakeholder comments, and our response, on the AC, SC, 09 and 118 SC caps and assumed point of handover respectively; and
- Section 10 sets out our decisions relating to the implementation of the unbundled tariff, including the price publication requirements for the access charge and service charge, various wholesale and access issues, exemptions from the unbundled tariff and the timing of implementation. Annex 24 to 25 detail stakeholder comments, and our response, on the price publication requirements and implementation issues respectively.

Part B – Section 8

Adopting the Unbundled Tariff

Introduction

- 8.1 In this section we set out the reasoning and evidence in favour of adopting the unbundled tariff. In particular why we consider it will address the consumer harm and market failures we identified in Section 4.
- 8.2 Annex 19 sets out in more detail how we assessed the unbundled tariff (and alternative options) in the April 2012 consultation, as well as stakeholder comments on that assessment and our response to those comments.
- 8.3 The views set out in this section take into account the full range of evidence presented in the April 2012 consultation, stakeholder comments and any further analysis we have carried out in light of those comments. However, reference should be made to Annex 19 and the relevant sections of the April 2012 consultation for the full range of evidence and analysis which supports our conclusions.

Consumer concerns and our policy objective

- 8.4 We set out in Section 4 our view on the consumer harm and market failures on these number ranges, in particular:
- **lack of consumer price awareness;**
 - **the vertical externality:** by this we mean that OCPs are not sufficiently motivated by the preferences of SPs on non-geographic numbers and therefore do not take into account the impact of their call pricing decisions on these SPs when setting their retail prices; and
 - **the horizontal externality:** by this we mean that individual OCPs and SPs do not have an incentive to take into account the impact of their NGC pricing on the reputation/brand of the number range, or on non-geographic numbers as a whole.
- 8.5 As set out in the April 2012 consultation and reiterated in Section 4 of this document, there is a widespread lack of consumer price awareness leading to overestimation of the price of calls to certain number ranges (in particular the 084 and 087 ranges) as well as general consumer confusion about prices. Separately, SPs do not have sufficient control of the price paid by callers, leading to retail prices that do not necessarily reflect the preferences of SPs (the vertical externality). Finally, OCPs and SPs do not take into account the effect their behaviour has on consumers' perceptions of calls made to these numbers from other OCPs and on calls to adjacent number ranges. In other words, consumer perceptions of the price for calling an 084/087 number from a fixed line will be affected by the perceptions of the price of calling the same number range from a mobile (and vice versa) and will also impact on their perceptions of call prices for other numbers in the range and other ranges. In such circumstances consumers are likely to base their decisions on inaccurate pricing information, and there are insufficient incentives on OCPs to price competitively.

- 8.6 These market failures lead to a number of outcomes which harm the interests of consumers:
- as a result of uncertainty about price, consumers limit the number or duration of calls they make on these ranges in circumstances where they would benefit from making more and/or longer calls;
 - the relative prices of calls to these number ranges do not reflect consumer preferences;
 - SPs on these ranges lack an incentive to invest in service availability and innovation; and
 - consumers may be unable to access or be deterred from accessing socially important services on the 084 range - especially 0845 - (a particular concern in the case of vulnerable customers).
- 8.7 There is significant evidence of consumer detriment in relation to the 084, 087, 09 and 118 number ranges which warrants our intervention. Section 4 and Annex 8 set out the evidence supporting our conclusions in this respect.
- 8.8 Our policy objective is therefore to address these market failures by protecting consumers from the harm we have identified, where to do so falls within our powers and fulfils our duties.

Adoption of the unbundled tariff

- 8.9 We initially consulted in December 2010¹⁰ on options to address the market failures with respect to the revenue sharing ranges. The options included setting fixed maximum retail prices and splitting retail charges to reflect the distinct services being provided when making a call – the “unbundled tariff” concept. In the April 2012 consultation¹¹ we proposed the unbundled tariff as our preferred approach and set out the proposal in more detail.
- 8.10 On the basis of responses to that consultation, engagement with a range of stakeholders (including discussions with industry) and further analysis, we provisionally conclude that the unbundled tariff is the appropriate regulatory measure for calls to the 084, 087, 09 and 118 number ranges.
- 8.11 The unbundled tariff involves restructuring charges to recognise separate payments to be made to the OCP, and to the TCP (potentially to be shared with the SP). The charges for the calls will therefore be separated into two components:
- **the Access Charge ('AC')**: to cover the cost and profit of the OCP; and
 - **the Service Charge ('SC')**: paid to TCPs to cover, or contribute towards their costs, as well as any revenue-sharing arrangements with SPs.
- 8.12 The pricing message presented to a consumer could therefore be as follows:

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>, see in particular Section 6 and Annex 5.

¹¹ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geographic-no/>, in particular Part B, Section 9.

“This call will cost you 10 pence per minute plus your provider’s access charge”

- 8.13 As noted above we considered alternative options to the unbundled tariff as part of the December 2010 and April 2012 consultations.¹² In the April 2012 consultation, we compared the unbundled tariff approach against setting maximum retail prices for calls to each number range. Some respondents to the April 2012 consultation have continued to argue that setting maximum retail prices is the best approach for addressing the consumer harm, particularly for tackling excessive retail charges and improving transparency of prices.¹³
- 8.14 Setting maximum retail prices would offer an improvement on the status quo, particularly in terms of improving consumer price awareness. However, it would also come with a number of significant drawbacks. In particular, setting maximum prices for all non-geographic number ranges would be a relatively interventionist approach which increases the risk of regulatory failure, relative to other approaches that achieve the same objective. There is a risk of prices not reflecting the preferences of consumers and reducing flexibility to respond to competition and innovation in the market. The regulatory burden associated with this approach would also be substantial, as it would not address the issues at the wholesale level, which is likely to lead to ongoing disputes and significant costs and uncertainty for stakeholders.¹⁴
- 8.15 In contrast, most stakeholders supported the unbundled tariff in response to the April 2012 consultation. Those respondents agreed that it would be likely to address the consumer harm we had identified and was a less interventionist approach than setting maximum retail prices. Some stakeholders commented favourably on the additional research and work with industry which Ofcom had undertaken since the December 2010 consultation, and the resultant revisions to the proposed structure of the unbundled tariff.
- 8.16 However, some stakeholders remained opposed to the unbundled tariff approach. Some CPs have questioned whether, in view of the significant costs likely to be involved in implementing the unbundled tariff, it is proportionate to the level of consumer harm. In addition, some stakeholders have noted that the unbundled tariff is an untested concept, and indicated concerns about consumer confusion as well as questioning whether it would lead to lower prices for consumers overall.
- 8.17 We have responded to these comments in detail in Annex 19. Whilst we acknowledge the concerns raised, we consider that there is sufficient evidence to find that the unbundled tariff is a justifiable and proportionate approach for protecting consumers against the harm we have identified. Below, we have set out our analysis of the unbundled tariff against each of our assessment criteria, and the evidence to support our assessment, as well as summarising our analysis of the impact of implementing the unbundled tariff.

¹² In particular, we considered information remedies, wholesale only remedies and maximum retail prices (discussed further in the next paragraph). We rejected the information remedies and wholesale only approach in the April 2012 consultation (see Part B, Section 9, paragraphs 9.28 to 9.40 and Annex 17). Some stakeholders have continued to argue in favour of a wholesale only approach, see Annex 19 where we respond to those comments.

¹³ Annex 19 sets out these comments and our response in more detail.

¹⁴ We discussed these costs in more detail in Section 9 of the April 2012 consultation, see paragraphs 9.172 to 9.185 in particular.

Assessment of the unbundled tariff

Consumer price awareness

8.18 We consider that the unbundled tariff is likely to significantly improve consumer awareness of non-geographic call prices, both at the point of call and at the point of subscription. In particular:

- **the pricing message to consumers will be simpler:** SPs will be able to state a specific SC for their non-geographic number, and that SC will be relevant information for all callers, because it will apply regardless of which OCP they are using to make the call. A significant proportion of consumers are likely to obtain non-geographic numbers from sources that allow the SC to be presented alongside the number being dialled and therefore will be made aware of the SC at the point of call. This consistent pricing message will be likely to reduce the current overestimation of prices, particularly for the 084/087 number ranges, and reduce general confusion about prices;¹⁵
- **the simplified structure of the AC will make it easier for consumers to remember:** the AC will apply to all non-geographic calls and will be a single pence per minute figure, making it easier for consumers to remember and to compare between providers (see Section 9 for further explanation of our decision on the structure of the AC).¹⁶ Because consumers call non-geographic numbers less frequently than other numbers¹⁷, they may not in all cases be able to recall their AC precisely; however, the simplified AC structure means it is more likely that they will recall its broad magnitude and it will also be easier for consumers to access information about the AC at the point of call.¹⁸ Survey evidence suggests that consumers would value information on non-geographic call costs at the point of subscription¹⁹ and that the simplified structure of the AC will make it easier both for OCPs to present and consumers to understand and compare such costs;
- **there will be a consistent structure applying to the various non-geographic number ranges:** the unbundled tariff will apply to the 084, 087, 09 and 118 number ranges (including, therefore, the 0845 and 0870 number ranges which we discuss later in this Section). In addition, there will be caps on the SC element for the 084, 087 and 09 number ranges (see Section 9) which will help differentiate the identity of each number range. As a result, even if a consumer does not know the SC at the point of call, the structure will offer them

¹⁵ 2011 Consumer survey, question GL14. 65% of callers obtained the telephone number for the last company or publication organisation they called from at least one of the following sources: the internet; a letter, bill or leaflet from the company being called; a written advertise; or an advert on the TV or radio.

¹⁶ This is particularly because it will apply across the 084, 087, 09 and 118 number ranges. These make up 63% of all non-geographic numbers and approximately 13% of fixed voice call minutes and 2% of mobile voice call minutes (based on data from the 2010 Flow of Funds study).

¹⁷ In the 2010 Consumer survey, 26% of consumers said they called 0845/0870 'sometimes' from a fixed line, the equivalent figure for mobile was 6%. Only 6% said they called 'regularly' from a fixed line, and 2% 'regularly' from a mobile.

¹⁸ In the same way that consumers currently are able to form a view of the relative prices of fixed and mobile calls (even though they are not able to accurately recall the exact charges). 78% of respondents to the 2010 Consumer research said that mobile 080 calls were more expensive than fixed 080 calls (question 33 and 34).

¹⁹ The 2010 Consumer survey found that 26% of fixed callers and 24% of mobile callers who had switched or considering switching in past 12 months would have like to have received information about 08/09 calls.

reassurance about the maximum price they could pay. This will reduce the potential for overestimation of prices.

- 8.19 We acknowledge the stakeholder concerns about consumer understanding of the structure, given that the unbundled tariff is a new approach. Having two prices is inevitably more complicated than a single price. However, the 2011 Experimental research found that providing accurate information at the point of call significantly improved decision making, and that price information did not need to be complete (i.e. the total charge) in order for it to be useful.²⁰ The same research found that the unbundled tariff structure made call decisions a little more complex, and this is in line with the concerns expressed by stakeholders.²¹ The research also found, however, that where subjects were provided with the SC at the point of call, the unbundled tariff model performed better than the status quo.²²
- 8.20 Similar pricing structures are being considered, and implemented, in other countries to address the same transparency issues.²³ This provides further reinforcement to our view that this is a viable structure for addressing the market failures.
- 8.21 Our provisional conclusion, therefore, is that the unbundled tariff is likely to improve consumer price awareness compared to the status quo and will act to protect consumers from the harm currently arising from poor price awareness of non-geographic calls among consumers.

Efficient prices

- 8.22 We consider that the unbundled tariff will lead to more efficient prices, i.e. prices which better reflect consumer preferences. In particular it will:
- **increase competitive pressure on the AC:** Today, consumers face a multitude of NGC prices, which cannot realistically be borne in mind by consumers when choosing between OCPs and as result competition is weak. The simple structure of the AC will mean it is easier for consumers to remember, and can be more readily taken into account when selecting which OCP to subscribe to. We recognise that because consumers call non-geographic numbers less often than other numbers the competitive constraints might not be as strong as for, for example, geographic or mobile numbers. But the simplicity of the AC structure will enable consumers who are sensitive to the price of NGCs to directly compare prices in a way which they currently are unable to do. It is not necessary for all consumers to be sensitive to such a charge for competition to be effective. Finally, in such a competitive environment and with the simplicity of the AC structure we expect to see pricing innovation – e.g. it will be open to retailers to choose to include calls to non-geographic ranges in call bundles;
 - **increase competitive pressure on the SC:** the extent for competition on the SC may be limited for some number ranges (for example on the 08 ranges in particular a high proportion of calls are likely to be public services, banks etc where customers are unlikely to be able to call a different SP). Nevertheless, for the 09 and 118 ranges in particular, SPs will be required to provide clearer price

²⁰ 2011 Experimental Research, page vii, point 1.

²¹ 2011 Experimental Research, page vii, point 3.

²² 2011 Experimental Research, page vii, point 1 and Table 2. In particular subjects made significantly better call decisions under treatments 4 and 5 (the unbundled tariff with the SC provided at the point of call) than under treatment 1 (the status quo).

²³ See Part A, Section 2, paragraphs 2.41 to 2.42 for further details of these international examples.

information that will enable a consumer to compare directly the SC between two SPs offering similar services, e.g. chatlines or directory enquiry services. Even for number ranges with less potential for direct competition, the unbundled tariff may lead SPs to migrate to number ranges where the cost of calling better reflects consumer preferences. The SC will be more visible and consumers will understand that the SP is responsible for this element of the charge, thereby increasing the potential for adverse publicity for SPs which have high SCs; and

- **reduce the effect of the horizontal and vertical externalities:** by giving SPs more control over their SC, and enabling the SP to advertise it clearly, the unbundled tariff will improve the efficiency of prices by providing SPs with the ability to obtain a number range with a price point that they consider will meet their customers' needs. It will also address the horizontal externality because:
 - the SC will be the same from all networks, and therefore it will not be influenced by perceptions of differing charges from fixed lines and mobile. Similarly consumers will be able to compare ACs between a fixed line and a mobile with greater ease than today's tariffs allow, reducing the potential for confusion between fixed and mobile call prices;
 - for a given package, the AC will be the same across the non-geographic number ranges and the maximum SC caps for the 084, 087 and 09 number ranges will help protect the identity of those number ranges. Therefore the potential for confusion between the number ranges will be reduced; and
 - taken together, these effects will remove the potential for both OCPs and SPs to free-ride on the reputation of a particular number range, e.g. setting higher prices for particular number ranges where this is not transparent to consumers.

8.23 As a result of these effects, we expect NGC prices are more likely to reflect callers' and SPs' preferences under the unbundled tariff.

8.24 A number of stakeholders have raised concerns that prices may rise under the unbundled tariff. We have responded to these comments in more detail in Annex 19. In summary we consider that the structure of the unbundled tariff will enable, and encourage, competition to develop on both the AC and, for most services, on the SC. We accept there is a risk that consumers will not respond to the unbundled tariff in the way we expect. We disagree, however, that the unbundled tariff structure means that, taking the market as a whole, price rises are likely to occur. Instead, we consider that, by developing an environment in which competition is encouraged, prices under the unbundled tariff are overall more likely to reflect consumer preferences than the status quo.

Service quality, variety and innovation

8.25 As noted above, consumers are more likely to have a broad sense of how much a call will cost under the unbundled tariff. By definition, this improved price awareness means a reduced tendency for consumers to overestimate the price of NGCs (in particular 084/087 numbers) and should help make consumers more confident about NGC prices in general. These effects are likely to improve demand for services (bringing back into the fold consumers who simply avoid calling NGCs whenever they can, for example), which in turn should improve service quality, variety and innovation. We discussed the impact of poor price awareness on demand for

services in more detail in Annex 8 of the April 2012 consultation²⁴ and we also respond to comments from EE on this point in Annex 8 (see paragraphs A8.17 to A8.19).

8.26 There is evidence that, currently, poor information leads to suppressed demand:

- a PPP report found that 74% of premium rate service users said that accurate pricing information was the single most important factor that would help to improve trust in premium rate services;²⁵
- our 2010 consumer survey found that 29% of landline users and 42% of mobile users who rarely or never call non-geographic number say the reason for this is because they are expensive²⁶ but as noted above (see paragraph 8.5) consumers are likely to be overestimating the price of 084/087 numbers; and
- in the 2009 Consumer survey we asked respondents how often they would make a call to a non-geographic number that is not contained in their package and for which they did not know the price. Only 21% of the respondents claimed that they would always make calls where there is a number not contained in their package where they did not know the call cost. The mean response to this question implied that more than three fifths of potential calls in this category are not made.²⁷

8.27 This evidence suggests that if consumers are more confident about prices, and are less likely to overestimate them, they are likely to make calls that they otherwise would not have made. This increase in demand is likely to benefit service innovation, variety and availability because it will be more attractive and viable for SPs to offer services on these number ranges (as noted in the April 2012 consultation, the current suppression of demand could be deterring SPs from offering services, because it makes those services less viable and attractive for SPs).²⁸

8.28 In addition, we expect the unbundled tariff to address the vertical externality. SPs will have greater control over the SC element of non-geographic calls and will be able to advertise this price clearly to its customers. We consider that this, as well as the likely increase in demand will allow SPs to innovate and develop new services, where previously they may not have done so (see Annex 11 of the April 2012 consultation where we provided examples of services, particularly DQ type services, which might not be emerging in the UK due to the lack of SP control over retail call prices).

8.29 For the regime to be technically and economically feasible, it is necessary for there to be a common understanding between SPs/TCPs and OCPs about the choices that an SP has in selecting an SC. Complete freedom to set SCs is attractive in principle but not workable in practice, in particular because of the increased billing costs for OCPs of handling a large number of different SC price points. We are requiring

²⁴ See paragraphs A8.231 to A8.257.

²⁵ PPP 2010 PRS Report, p.17: http://www.phonepayplus.org.uk/For-Business/~media/Files/PhonepayPlus/Research/2011_CurrentandemergingtrendsintheUKPRSmarter2010AnalysysMasonreport.pdf

²⁶ 2010 Consumer survey, Q23/27.

²⁷ 2009 Consumer survey, Q39. As noted in the April 2012 consultation (see paragraph A8.267 in Part A, Annex 8) we do not believe that the responses to this question gave a reliable indication of the scale of suppressed demand. However, they did give an indication of the direction of the effect, i.e. that some calls are likely to be deterred by a lack of price awareness or information.

²⁸ See for example paragraphs A8.451 and A11.5 in Part A of the April 2012 consultation.

OCPs to bill a minimum of 80 SC price points when the new requirements come into effect increasing, a year later, to a minimum of 100 SC price points (see Section 9 below). Some stakeholders are concerned that this will limit SPs pricing flexibility and ability to innovate. Compared to the status quo, this level of flexibility will be a significant improvement on the ability of SPs to compete on price (as currently they are not able to advertise a clear price that is relevant for all callers). Consumers will be able to directly compare the SC for two different services, and therefore SPs will be able to compete on that price. We consider that a minimum of 100 SC price points will still allow a competitive pricing environment to develop on the SC.²⁹

- 8.30 On this basis we conclude that the unbundled tariff will promote greater service quality, variety and innovation in relation to NGCs than the status quo.

Access to socially important services

- 8.31 This criterion is primarily relevant to the 084 number ranges. A range of different socially important services are provided on 0845 numbers (e.g. the DWP Job Centre Plus service, HM Revenue & Customs child benefit helpline and the Samaritans). In addition there are over 1,000 GP surgeries which use 084 numbers (including 23 in Northern Ireland).³⁰ Information gathered from OCPs and TCPs last year indicated that up to 30% of services on the 0845 range could fall within our definition of 'socially important'.³¹
- 8.32 The unbundled tariff will improve vulnerable consumers' access to socially important services provided on the 084 range in the following ways:
- vulnerable consumers will be more aware of the prices of calls to socially important services provided on the 084 number ranges (as outlined under the price awareness criterion above), because the SP will now advertise a single SC for calling the service it provides on the number range. This will reduce the price overestimation that deters these callers currently.³² Removing that price overestimation will help avoid consumers being deterred from accessing socially important services on the 084 range; and
 - the unbundled tariff will make it clear how much of the call price the OCP is responsible for and how much the SP is responsible for. SPs operating socially important services may not wish to be perceived as earning revenue from calls. SPs providing socially important services might be particularly sensitive to claims that they are profiting unduly from NGCs.³³ As a result, concerns about adverse

²⁹ We note that in France under a similar unbundled tariff model, ARCEP expects only around 30 price points to develop.

³⁰ See Surgery Line's April 2012 consultation response. A debate in the Northern Ireland Assembly in May last year noted that there were 23 GPs surgeries there which used 084 numbers. <http://www.niassembly.gov.uk/Documents/Official-Reports/Plenary/2012/20120529.pdf> (see from page 194).

³¹ See Section 3 in Part A where we set out our definition of socially important services. The information about socially important services was set out in Part A, Section 5 paragraphs 5.106 to 5.111 of the April 2012 consultation.

³² Our evidence on price overestimation from the 2009 Consumer survey shows that consumers estimated price for 0845 calls (30ppm for fixed calls and 46ppm for mobile calls) is significantly greater than the actual price (5ppm for fixed calls and 22ppm for mobile calls). These figures are presented in Table A8.10 in Annex 8 of the April 2012 consultation.

³³ Doctor's surgeries have already been subject to some of this adverse publicity. For example a debate in the Northern Ireland Assembly in May last year called for doctors' surgeries to be banned from using 0844 numbers (<http://www.niassembly.gov.uk/Documents/Official->

publicity may prompt some SPs to select either a different number range (such as 03) or a low SC.³⁴

- 8.33 In respect of the second point, as we have said previously, we did not consider it justifiable or appropriate for Ofcom to prevent public bodies using revenue sharing non-geographic numbers, particularly as an approach that singles out public sector services could be potentially discriminatory or may reduce the availability of services.³⁵ Therefore, beyond the need to be consistent with the basic requirements of the Numbering Plan, the choice of number range for any given service or organisation falls outside Ofcom's regulatory duties and is a matter for the organisation concerned.³⁶ Nevertheless, under the new structure, call prices will be clearer and SPs will stand to benefit if they choose number ranges which are appropriate to the service they are offering and their caller's preferences, and they will be more confident of the cost of such calls to their callers.

Regulatory burden

- 8.34 Implementing the unbundled tariff will impose costs, which are ultimately borne by consumers. We have set out our estimates of these costs, which we have refined in light of stakeholder comments, in Annex 10. As discussed in the April 2012 consultation, we refined our proposals following detailed discussion with the industry in order to reduce the extent of the cost burden on CPs.³⁷ There remains some uncertainty about exactly how much it will cost industry to implement these reforms and we have taken this into account in our cost estimate where possible by using conservatively high estimates.
- 8.35 Whilst these costs are significant, our analysis indicates that the benefits to residential consumers of the reduction in price overestimation on 084/087 alone are likely to substantially exceed the resource costs of the unbundled tariff (see summary of our quantified impact assessment below). We consider that the unbundled tariff is likely to both reduce the extent to which consumers overestimate prices and lead to a shift in demand, and that taking any shift in demand into account (as well as the additional benefits we did not model) will reinforce this conclusion.
- 8.36 The unbundled tariff should also reduce the scope for disputes between CPs in the wholesale NGC market. As noted in Section 2 there have been numerous disputes, some still ongoing, over termination rates for NGCs. In several cases, Ofcom's determinations of these disputes have led to protracted litigation before the appeal

[Reports/Plenary/2012/20120529.pdf](#) - from page 194 onwards). In addition, a recent Westminster parliamentary debate covered the issue of the DWP use of 0845 numbers: <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121121/debtext/121121-0003.htm#12112190000731>

³⁴ We understand that some providers of socially important services have already started to move their services to 03 numbers. For example, the HMRC Tax Credit helpline is now provided on a 0345 number (which was previously a 0845 number). The British Medical Association has also indicated that a number of doctor's surgeries are moving away from the use of 084 numbers.

³⁵ See http://www.ofcom.org.uk/consult/condocs/nts_forward/, paragraph 1.18.

³⁶ We have however, previously stated that public bodies that currently rely exclusively on chargeable 08 numbers for access to socially important services could consider giving equal prominence to an alternative, geographic rated number for those services, particularly when dealing with people on low incomes or other vulnerable groups.

³⁷ For example proposed not to oblige CPs to separate out AC and SCs on customer bills, because of the additional costs this generated. In addition, we have included a requirement for a minimum of 100 SC price points for OCPs, because of the billing costs involved with a significant number of SC price points.

courts (notably, the CAT and Court of Appeal). Managing this process creates significant costs for CPs, as well as uncertainty over revenues both for CPs and SPs. By enabling the OCP and TCP to determine individually the charges for, respectively, origination services (the AC) and those for termination and access to the services called (the SC), this type of dispute about termination rates should no longer arise. SCs will not be allowed to vary depending on the identity of the OCP and therefore it will no longer be possible for a TCP to set termination rates by reference to the OCP's retail prices (the source of several disputes in recent years).³⁸ It is, of course, possible that other wholesale issues may arise under the new structure, requiring Ofcom to act.

- 8.37 Nevertheless, by providing more certainty and clarity to the industry, the unbundled tariff will reduce the regulatory burden and the risk of future regulatory or competitive disputes on CPs compared to the status quo.

Overall assessment

- 8.38 The unbundled tariff is likely to improve price transparency, protecting consumers to a greater extent than today from the harm experienced as a result of poor price awareness. Consumers will be able to choose an AC which reflects their preferences as part of their overall phone package and the regulatory rules will require that consumers are told the SC for each call when a non-geographic number is advertised.
- 8.39 The unbundled tariff will also benefit SPs who will have greater control over the price of their service. They will be able to advertise more clearly the cost of calls to their customers, encouraging competition between SPs and in turn leading to a positive effect on service availability and innovation.
- 8.40 The structure will create an environment in which competition can develop on the single AC for non-geographic calls, leading to prices that better reflect consumer preferences. Improved awareness of prices by consumers will also improve access for mobile-only consumers to socially important services offered on the 084 range in particular.
- 8.41 We have also carried out a quantitative assessment of the costs and weighed these against the benefits we are able to quantify. This is summarised below but first we have considered the particular treatment of the 0845 and 0870 ranges within the revised structure.

Treatment of the 0845 and 0870 number ranges

- 8.42 As noted at the start of this section, these two number ranges were previously linked to geographic call prices. They have both been in existence for a long time and have a complex history which has shaped how industry and consumers view the numbers. Ofcom's policy preference for these ranges has always been that they should be treated in the same way as calls to geographic numbers and this was most recently reiterated in our 0845/0870 Dispute Determination.³⁹

³⁸ See Section 9 below where we discuss the structure of the AC and SC, including the prohibition of bespoke SCs

³⁹ 0845/0870 Dispute Determination, paragraph 2.2. See also paragraphs 2.39-2.50.

http://stakeholders.ofcom.org.uk/binaries/enforcement/competition-bulletins/closed-cases/all-closed-cases/761146/Final_Determination.pdf

8.43 In the April 2012 consultation, given the issues connected with these number ranges, we consulted on the following options:⁴⁰

- **Option 1:** re-affirming the link to geographic calls; and
- **Option 2:** applying the unbundled tariff to the 0845 and 0870 ranges and, thereby, aligning them with other 084 and 087 ranges (that is, no specific link to geographic or local calling rates).

8.44 Although we said that both options would be improvements on the status quo, we concluded that, on balance, Option 2 would lead to a more intuitive numbering plan and, consequently, would be more effective at addressing the identified market failures of poor consumer price awareness and the resulting horizontal externality. Thus, our provisional view in the April 2012 consultation was that Option 2 was the preferred approach for the 0845 and 0870 ranges.

8.45 The majority of stakeholders agreed with this assessment, particularly those who favoured the unbundled tariff as an overall approach. These respondents noted the benefits of having a consistent approach to all the 084/087 ranges and said that the resulting clarity would contribute positively to consumer confidence. Two respondents suggested, however, that the 0870 range should instead be closed or quarantined as it had gone through a number of changes over the years that had rendered the range too confusing for consumers.⁴¹ In addition the DWP noted it favoured an approach where the 0845 range was linked to the price of geographic calls. We have set out stakeholder comments in detail in Annex 19 as well as our response to the specific points raised.

Adopting the unbundled tariff for the 0845 and 0870 ranges

8.46 Having considered stakeholders' responses to our question about the 0845 and 0870 ranges, we provisionally conclude that applying the unbundled tariff to these ranges is the best option for consumers and SPs, and for advancing the policy objectives of our review of non-geographic calls.

8.47 Below, we have set out our evaluation of applying the unbundled tariff to the 0845 and 0870 range against each of our assessment criteria, and the evidence to support our assessment.

Consumer price awareness

8.48 For the same reasons as set out in our assessment under this criterion of the unbundled tariff structure as a whole, applying this structure to the 0845 and 0870 ranges will improve consumer price awareness. The SC will be presented to the majority of consumers at the point of call and the consistency of the AC message will enable consumers to develop an understanding of its broad magnitude, even if they do not remember the exact level at the point of call. Including the 0845 and 0870 number ranges is likely to significantly enhance the effectiveness of the unbundled tariff as a whole in terms of price awareness because it will apply to a greater number of calls - 0845 in particular is the second largest non-geographic number range (by volume of calls).⁴² Since the AC will apply to more calls, it is more likely that

⁴⁰ April 2012 consultation, Part B, pp.180-203.

⁴¹ THA and Magrathea

⁴² 2010 Flow of funds study, p.31.

consumers will pay attention to it and remember it over time, as well as being more likely to take it into account when selecting which OCP to subscribe to.

- 8.49 A particular benefit to consumer price awareness which arises from including these number ranges within the same structure as other NGCs is that it removes the potential for confusion between similar looking number ranges. The 2011 Consumer survey found that consumers currently struggle to distinguish between number ranges which look similar (i.e. between 0845 and 0844/3 and between 0870 and 0871/2/3).⁴³ Under the unbundled tariff, while the exact level of the SC will obviously depend on the particular number being called, callers will face a consistent pricing structure and will more easily be able to make inferences about the price they will face for calling a particular number range, e.g. an SC of no more than 7p for an 084 number and no more than 13p for an 087 number.

Efficient prices

- 8.50 Applying the unbundled tariff to these number ranges will enable a consistent approach to the presentation of pricing across 084/087 numbers and this will reduce the potential for the horizontal externality to negatively impact consumers perceptions of these number ranges. In contrast, if a different approach (i.e. linking to geographic call prices) was applied, the potential for confusion would be greater, because consumers would need to be able to distinguish between, for example 0845 and 0844, and recall the different price structures that would apply.
- 8.51 In terms of the vertical externality (i.e. SPs preferences for the prices of these number ranges), our 2011 SP survey suggests more SPs on the 0845 range would prefer prices to be linked to geographic rates than the unbundled tariff.⁴⁴ In addition, the unbundled tariff means that SPs would be able to control the SC but not the AC (therefore they would only control one aspect of the total price). However, in comparison to the status quo, the unbundled tariff will provide SPs with greater control over the prices they charge to their customers for accessing their services (through the SC), thereby reducing (if not fully removing) the extent of the vertical externality. In particular, SPs will be able to control their call prices relative to one another even though they will not have full control over the absolute amount callers pay.
- 8.52 As highlighted by some stakeholders, there is a risk that prices for these particular number ranges could increase with the application of the unbundled tariff, in particular for some fixed callers because some fixed OCPs currently include these ranges within their inclusive bundles of call minutes (for example BT and TalkTalk both include 0845 and 0870 within most call bundles – see Table 2.2 in Section 2). However, as indicated under our assessment above, the structure of the unbundled tariff will enable an environment in which competition is encouraged and therefore prices under the unbundled tariff are overall more likely to reflect consumer preferences than the status quo, for both fixed and mobile callers.

⁴³ In the 2011 Consumer survey we asked respondents about the relative prices of these number ranges. The majority responded that they either did not know the price of these numbers or were unaware of the existence of the number range. Questions GL03A/GL04A and GL03B/GL04B.

⁴⁴ 2011 SPs' survey 86% of SPs said that callers being charged the same amount as a landline call was either very important or important to them (Q28). 52% said they would prefer an option where 0845 was geographically rated, whereas 16% favoured the unbundled tariff (Q31).

Service quality, variety and innovation:

- 8.53 Evidence from our 2011 SP survey indicates that there could be some migration away from these number ranges as a result of the application of the unbundled tariff.⁴⁵ We estimate that between 10% and 20% of 0845 SPs could migrate their service to another number range.⁴⁶ In particular the following effects could lead to SPs migrating away from these ranges:
- it will be more apparent to consumers that not all of the price of 0845 and 0870 calls is being retained by the OCP. Rather some revenue is received by the SP (or the TCP). Some SPs may not wish to be perceived as ‘profiting’ from 0845 and 0870 calls. Accordingly these SPs may seek to migrate to another number range, for example 03; and
 - in addition, some OCPs may set an AC that leads to an overall increase in the retail price that consumers currently pay for making calls to 0845 and 0870 numbers (particularly those OCPs that currently include these calls within call bundles). This may reduce the volume of calls from these OCPs and some SPs may lose out and therefore choose to migrate away from the range.
- 8.54 Migration does not necessarily lead to service loss, as SPs are likely to migrate their services to another number range, e.g. 03 or another price point within the 084/087 range. The price of calls to the 03 range is linked to geographic prices and therefore would meet the preferences of those SPs who favour that pricing model. The 03 range will be included as part of our general communications campaign (see Section 5) which should help improve its awareness and its pricing message will be reinforced by it being the only non-geographic number which is explicitly linked to geographic prices.
- 8.55 Nevertheless there is potential for some services to be withdrawn or made less easily available on the 0845 number ranges - results from the SP survey indicate that potentially 5% to 9% of SPs could withdraw their service altogether.⁴⁷ However, our SP survey indicated a similar level of migration could occur if we applied the alternative approach of geographically rating these calls; SPs on this range clearly have different preferences and therefore either option would lead to some SPs preferences not being met.⁴⁸
- 8.56 In addition, as outlined under our assessment of the unbundled tariff as a whole under this criterion, there could also be positive effects on service availability generated from the improved consumer price awareness which in turn will make it more attractive for SPs to offer services on these number ranges. In addition, the greater control which SPs will have over their SCs is more likely to encourage service variety and innovation. These impacts are likely to have a greater positive impact as a result of the unbundled tariff than they would from geographically rating these number ranges. The consistency of the message for the unbundled tariff if it includes these number ranges will offer greater benefits to consumer price awareness for non-

⁴⁵ 2011 SP survey, of those SPs who indicated a preference for 0845 to be geographically rated, if the unbundled tariff was introduced, 21% said they would get a new number and 18% said they would get rid of that line completely (Q32).

⁴⁶ Based on data from the 2011 SP survey. See paragraph 11.168 of April 2012 consultation, Part B, Section 11, where we explain how we calculated these percentages.

⁴⁷ 2011 SPs’ survey, questions 31-34. See previous footnote for source.

⁴⁸ 2011 SP survey, of those SPs who indicated a preference for 0845 to have the unbundled tariff, if geographically rating was introduced, 16% said they would get a new number and 21% said they would get rid of that line completely (Q32).

geographic numbers as a whole, potentially leading to greater consumer demand for services, thereby incentivising the provision of more services by SPs on these numbers.

Access to socially important services:

- 8.57 As set out above, many socially important services use 0845 numbers.⁴⁹
- 8.58 Because some fixed providers include these number ranges within their call bundles/packages (e.g. BT and TalkTalk), there is a risk that overall call charges (from fixed lines at least) could be higher for the 0845 range under the unbundled tariff. However, as noted earlier, the simplified structure of the AC is likely to encourage competition between OCPs. This could push prices down, particularly mobile prices. Given that a greater proportion of vulnerable consumers are mobile-only, this may therefore improve these customers' access to socially important services on this range.⁵⁰
- 8.59 One factor in assessing whether the unbundled tariff would improve access to socially important services is the extent to which consumer confidence would be improved. The current confusion which exists has a negative effect currently on vulnerable consumers' willingness to use these numbers to access socially important services. Including these number ranges within the unbundled tariff would offer a greater improvement to consumer price awareness and the perception of these number ranges, in particular by reducing the extent to which consumers overestimate prices. Consequently, it will also improve vulnerable consumers' access to socially important services on the 0845 range.

Regulatory burden

- 8.60 As highlighted above, including the 0845/0870 number ranges within the unbundled tariff structure is likely to lead to some migration by SPs away from the ranges, and there are therefore costs associated with this migration. The other costs involved with implementing the unbundled tariff have been set out as part of our overall impact assessment.
- 8.61 In Annex 10 we have set out our revised estimates of these migration costs, as well as the resultant misdialling costs and costs to consumer time caused by calling numbers which are no longer in use. The Table below summarises the updated costs of the two options.

⁴⁹ See April 2012 consultation, Part A, Table 5.1, p.82.

⁵⁰ 25% of households in the DE socio-economic group are mobile-only, compared to 15% overall. Figure 5.76 of the 2012 CMR, http://stakeholders.ofcom.org.uk/binaries/research/cmr/cmr12/UK_5.pdf

Table 8.1: Migration cost estimates for 0845 and 0870 under each of the options considered

	Option 1 (geographic rating)			Option 2 (the unbundled tariff)		
	Migration costs	Misdialling costs	Consumer time costs	Migration costs	Misdialling costs	Consumer time costs
Scenario 1	£3.7m - £9.2m	£1.0m	£7.6m	£6.3m-£15.8m	£3.1m	£13.0m
Scenario 2	£2.0m-£4.9m	£0.5m	£4.0m	£3.4m-£8.5m	£1.6m	£7.0m

8.62 Undoubtedly there are higher costs associated with the option of including these number ranges within the unbundled tariff structure as opposed to geographically rating the ranges. However, as we set out in more detail below in relation to our quantified assessment of the benefits of the unbundled tariff, we consider that the ongoing benefits of reduced consumer confusion and greater price transparency by including these number ranges within the unbundled tariff structure are likely to outweigh these additional migration costs.

Summary of assessment of the 0845/0870 ranges

8.63 Continuing to treat these number ranges differently to other, very similar looking, non-geographic number ranges creates a significant risk of enduring consumer confusion between the price and treatment of 0845 and 0870 on the one hand, and other 084 and 087 numbers on the other.

8.64 This has, and would, continue to undermine consumer confidence and understanding in both these number ranges, and other unbundled tariff number ranges. Including these ranges within the unbundled tariff comes with higher transition costs for industry, and potentially greater migration costs for some SPs – which could negatively affect service availability on the range (but not necessarily across all ranges as SPs would presumably migrate to another range). However, given the size of the 0845 and 0870 number ranges, it is likely that the ongoing benefits of reduced consumer confusion and improved price awareness under a single approach to all 084/087 number ranges are significant and will outweigh additional one-time migration/misdialling costs and limited impact on service availability.

8.65 Therefore, we provisionally conclude that the unbundled tariff should apply to the 0845 and 0870 ranges. This represents a departure from our historic policy preference for these number ranges, because any link to geographic call pricing will be removed. However, for all the reasons outlined in our assessment above, we consider that this is justified.

Quantified impact assessment

Assessment of costs

8.66 Annex 10 sets out our analysis of the costs of implementing the unbundled tariff. The main cost is to update CPs' billing systems to give effect to the new structure. The

other costs include migration costs, for those SPs that decide to migrate to a different number range, and communications costs (which includes communication to consumers of the new structure, e.g. by OCPs, and communication by TCPs to their SP customers). Our updated estimates of each cost area for the unbundled tariff are summarised in the Table below.

Table 8.2: Estimated costs of implementing the unbundled tariff

	One-off costs	Annual costs
Billing costs	£11.2m to £35.1m	£1.4m to £7.4m
Communication costs	£2.3m to £5.9m	None
Migration/misdialling/consumer time costs	£12m to £31.9m	None
Total costs	£26.5m to £73.0m	£1.4m to £7.4m

8.67 As set out in Annex 10 these cost estimates are based on a range of different evidence, in particular information from CPs and SPs. That information indicated that the range of costs could vary significantly between different stakeholders (particularly in terms of billing costs, where more modern billing systems are more easily able to implement the unbundled tariff structure). In addition the estimates of migration and misdialling costs also depend on the extent to which SPs decide to migrate away from the 0845 and 0870 number ranges after the implementation of the unbundled tariff. Our estimates are therefore presented in wide ranges to reflect the uncertainties and potential for different stakeholders to experience different levels of cost. We nevertheless consider that they represent a reasonable approximation of the likely costs involved with implementing the unbundled tariff.

8.68 We have made some revisions to our approach to estimating billing costs in Annex 10, in particular the methodology we have used to estimate costs for different types of stakeholder and billing systems. We are therefore offering stakeholders the opportunity to comment on our revised approach to estimating billing cost estimates and we have set out a specific question to stakeholders on this issue in Annex 10 (this question is also listed alongside the other consultation questions in Annex 4).

Assessment of benefits

8.69 Our analysis above sets out our qualitative assessment of the benefits of the unbundled tariff against each of our assessment criteria. However, to place the quantified costs in the Table above into context we have carried out a quantified assessment of some of the benefits we expect the unbundled tariff to create. We have developed and extended our approach to this quantification since the April 2012 consultation. In particular we have taken a different approach to assessing the benefits of the 09 range compared to the 084/087 range.

8.70 Annex 11 sets out our approach to quantification of the benefits in detail. Below we first summarise the approach for the 084/087 ranges; then explain the different approach we have taken for the 09 range. We have not modelled the benefits for the

118 range because we do not have the necessary data⁵¹ but these are set out qualitatively as part of our assessment above.

8.71 For the 084/087 ranges we have placed the resource costs of introducing the unbundled tariff into context by calculating:

- i) **the threshold for reduction in price overestimation:** residential consumers currently overestimate the price of 084/087 calls. We expect the unbundled tariff to create improved price awareness in these number ranges, therefore the gap between residential callers' expected price for NGCs and the actual price of those calls would narrow. We have calculated by how much this gap would need to narrow in order for the benefits to residential callers of the unbundled tariff to outweigh the quantified resource costs; and
- ii) **the threshold for shift in demand:** the unbundled tariff may also prompt a general increase in demand for NGCs (separate from the impact on price overestimation), for example because fewer consumers are deterred from making NGCs by price uncertainty and/or because the quality and variety of services available via non-geographic numbers improve. We have calculated how much demand would need to increase in order for the benefits to residential callers of the unbundled tariff to outweigh the quantified resource costs.

8.72 Both a reduction in price overestimation and a shift in demand will tend to increase the number of 084/087 calls made by residential consumers. We have calculated two ways in which this is likely to benefit residential consumers:

- residential consumers are likely to enjoy extra utility (consumer surplus) from the extra calls that they make; and
- higher call volumes are likely to increase OCPs' profits. A proportion of these additional profits are likely to be passed onto residential consumers in the form of lower prices for telecoms services (the tariff package effect).

8.73 It is important to recognise that this quantified element of our impact assessment does not capture all the benefits of the unbundled tariff:

- we have not modelled the effects of improved competition between OCPs and SPs, such as a more efficient structure of prices;
- similarly we have not modelled any distributional effects (i.e. improved access to socially important services by vulnerable consumers); and
- we have only modelled the benefits for residential callers. We have not modelled the benefits of higher 084/087 volumes for OCPs, TCPs or SPs.

8.74 The Table below shows by how much the gap between actual and expected prices would need to narrow in order for the benefits to residential callers of the unbundled tariff to outweigh the resource costs. As shown in the Table, to account for uncertainty, we have presented the sensitivity of these results to two major assumptions – the measure of expected prices and the cost scenario. To illustrate how to interpret this Table, suppose that the actual price of calls were 10ppm but

⁵¹ For example, we do not have access to data indicating consumers' expectations of the price of 118 calls because questions regarding the 118 number range were not included in the 2009 Consumer survey.

consumers expected the price to be 25ppm.⁵² The gap between actual and expected prices is thus 15ppm. If the threshold were 10% then a 10% fall in this gap would imply the expected price falls to 23.5ppm, i.e. by 1.5ppm.

Table 8.3: Threshold for reduction in price overestimation for 084/087 (using base case assumptions)

	Mode 2009	Mean 2009	Median 2009
Low costs	1.4%	1.6%	2.8%
Central cost assumption	3.2%	3.8%	6.7%
High costs	5.0%	6.0%	10.6%

Note: figures rounded to one decimal place

- 8.75 As shown above, eliminating between 1.4% to 10.6% of the gap between expected and actual prices would suggest that the benefits to residential consumers (just) outweigh the resource costs. In Annex 11 we illustrate what this range means in ppm terms. Table 8.3 shows the ppm reduction in 084 and 087 price overestimation necessary for the benefits to residential consumers to reach the point where they outweigh the resource costs.
- 8.76 We consider it is likely that the unbundled tariff would improve price expectations by considerably more than this amount. Indeed even if the threshold were higher (due to a combination of pessimistic assumptions about the benefits of the unbundled tariff) we consider that it is still likely to be exceeded for the reasons set out in our analysis under the consumer price awareness criterion above.
- 8.77 We have also calculated the effect of a shift in the demand curve. Table 8.4 below shows by how much call minute volumes would have to increase for the benefits to residential callers of the unbundled tariff to outweigh the resource costs. Again, to account for uncertainty, we have presented the sensitivity of these results to two major assumptions – the measure of expected prices and the cost scenario.

Table 8.4: Threshold for shift in demand (using base case assumptions)

	Mode 2009	Mean 2009	Median 2009
Low costs	0.1%	0.1%	0.2%
Central cost assumption	0.2%	0.3%	0.4%
High costs	0.4%	0.4%	0.6%

Note: figures rounded to one decimal place

- 8.78 Therefore the effects of a shift in demand of 0.1% to 0.6% would suggest that the benefits to residential consumers of the unbundled tariff outweigh the resource costs.

⁵² These figures are purely illustrative. Actual and expected prices differ between number ranges and between mobile and fixed calls. We have taken these differences into account in our modelling.

Such a shift in demand might be prompted by a general increase in consumer confidence in making 084/087 calls or by improved service availability. It is plausible that the unbundled tariff would increase demand by this amount (for example see our assessment under the service quality, variety and innovation criterion above).

- 8.79 Given the threshold at which the benefits to residential consumers outweigh the resource costs, the size of a shift in demand due to the unbundled tariff does not need to be large. Indeed, even using multiple unfavourable assumptions in the pessimistic case, we estimate that the size of the shift in demand required for the benefits of the unbundled tariff to outweigh the costs is still less than 1%.
- 8.80 In practice, we consider that the unbundled tariff is likely to both reduce the extent to which consumers overestimate prices and lead to a shift in demand. As explained above, the benefits to residential consumers of the reduction in price overestimation alone are likely to substantially exceed the resource costs of the unbundled tariff. Taking any shift in demand into account will reinforce this conclusion.
- 8.81 As noted above, we did not quantify all the costs associated with the unbundled tariff e.g. the costs of SPs that migrate in response to increased competitive pressures. However given that the thresholds for the reduction in price overestimation are likely to be exceeded, the presence of these unquantified costs is unlikely to change our conclusions. As explained above, we have not quantified a number of important benefits of the unbundled tariff. These unquantified benefits include distributional effects and the impact of improved competition (e.g. a more efficient pattern of retail prices and greater constraints on SPs' pricing).
- 8.82 We have taken a different approach to quantifying the benefits of unbundling the 09 number range. This is because, as set out in paragraphs A11.74 to A11.81, it is not clear from the consumer surveys how consumers perceive the price of 09 calls. Given this uncertainty, we have assessed the impact of implementing the unbundled tariff under three scenarios. Under each scenario, we assume that the incremental costs of implementing the unbundled tariff on the 09 range, assuming it is already implemented on the 084/087 number ranges, is low (the reasons behind this assumption are set out in paragraph A11.83 in Annex 11).
- 8.83 The three scenarios are as follows:
- consumers overestimate 09 prices – in this case, we consider that unbundling the 09 tariff is justified because we qualitatively consider that the associated positive consumer benefits (reduced price overestimation and increase in demand for NGCs) are likely to outweigh the relatively low costs of the implementing the unbundled tariff;
 - consumer expectations of 09 prices are broadly accurate – in this case, we acknowledge that the motivation for implementing the unbundled tariff is less obvious because there appears to be less consumer harm. However, we consider it is likely that there are still a number of potential benefits of implementing the unbundled tariff on 09 (these are set out in paragraph A11.93 to A11.95) and these are likely to outweigh the relatively low incremental implementation costs; and
 - consumers underestimate 09 prices – in this case, we attempt to model the impact of implementing the unbundled tariff on the assumption that it will reduce consumer price underestimation and therefore lead to less NGCs. Although we are not able to fully quantify the effect of this scenario, we consider that the

overall impact of the unbundled tariff is more likely than not to be positive given that the remedy is likely to improve consumer price awareness. In general, we expect consumers will be better off as a consequence of making better-informed decisions.

- 8.84 Overall, we place more weight on the findings under our second scenario (i.e. 09 callers are relatively price aware). The fact that 09 SPs must publish 09 prices at the point of call, together with the fact that callers are more likely to be sensitive to 09 prices, suggests that the majority of those that currently call 09 numbers are likely to have price information available to them at the point of call. Therefore, we consider that the impact of unbundling the 09 range is likely to be positive overall for residential consumers. In any event, we place significant weight on the benefits of applying the unbundled tariff consistently across both 084/087 and 09 number ranges, because we consider that applying separate remedies to different number ranges (on top of our separate treatment of 080 numbers) is likely to be less effective in addressing the problems of price complexity and lack of consumer price awareness experienced today, as well as the other problems we have identified in Section 4.
- 8.85 Given that we have taken a new approach to quantifying the benefits of implementing the unbundled tariff on the 09 range, this is one of the aspects of our analysis on which we are consulting with stakeholders before making a final decision. We have set out a specific question in this respect in Annex 11 (and this is also listed as part of all the consultation questions in Annex 4).
- 8.86 The discussion in the paragraphs above relates to the benefits for residential consumers. However, we have also considered the impact of the unbundled tariff:
- on consumers in a broad sense, relying on section 58(1)(aa), to encompass residential users and SPs who consume hosting services; and
 - the impact more generally on all stakeholders in accordance with our general duties.
- 8.87 We consider that increased call volumes (as a result of improved price awareness etc) are also likely to benefit OCPs, TCP and SPs. Put simply, all these parties are likely to benefit from originating and receiving more calls. These benefits are an additional positive effect from increased NGC volumes that is not captured in the calculations of quantified effects set out in the paragraphs directly above (but which we have referred to as part of our qualitative assessment of the unbundled tariff using our assessment criteria in paragraphs 8.18 to 8.45 earlier in this Section).
- 8.88 Increased competitive pressures on SPs and OCPs are also likely to have a positive overall effect (looking at all stakeholders, including callers).⁵³
- 8.89 Overall, taking into account the impact on stakeholders more widely (including consumers other than residential callers), we consider that there are additional positive effects that are not incorporated in the above modelling. Taking these

⁵³ Obviously increased competition is likely, on average, to have a negative impact on suppliers' profits, but our view is that it is generally likely to be outweighed by the wider benefits, such as lower prices for customers and higher-quality services. ⁵⁴ Ofcom, *Service Charge Caps for 09 and 118 Services; consultation on maximum Service Charges for PRS and Directory Enquires services in the unbundled tariff regime*, 25 July 2012, 'the July 2012 consultation', <http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/>

additional effects into account reinforces our view that the benefits of the unbundled tariff are likely to outweigh the resource costs.

Summary

- 8.90 We have decided, subject to the outcome of the issues we are consulting on, to implement the unbundled tariff for all of the 084, 087, 09 and 118 number ranges. Our impact assessment indicates that the costs of this approach are likely to be outweighed by the benefits and we are satisfied that it is a proportionate and justifiable approach.
- 8.91 We have set out in Section 6 the proposed changes that we intend to make to the General Conditions, the PRS Condition and the Numbering Plan in order to bring this decision into effect. As set out in that Section, we are also proposing a new numbering condition which will apply to SPs which are not also CPs.

Part B - Section 9

Design of the Unbundled Tariff

Introduction

- 9.1 In this Section we set out our provisional conclusions on the design of the unbundled tariff - in particular the structure of the Access Charge ('AC') and the Service Charge ('SC'), as well as the division between the two (the 'Assumed Handover Point' or 'AHP'). In many respects, the design we set out follows closely the design proposed in the April 2012 consultation. The main change is that we now consider we should prohibit time of day variations on the SC element, following strong stakeholder support for such an approach and limited evidence of benefits to justify such variations.
- 9.2 This Section also sets out our view on SC caps for each number range. We consulted separately on proposed caps for the 09 and 118 number ranges in July 2012.⁵⁴ We have provisionally decided to impose the caps we proposed for the 09 number range in that consultation. However, we have changed our position on the 118 number range and we have concluded against imposing a cap on the 118 SC.
- 9.3 Annexes 20 to 23 contain a summary of the responses we received to the April 2012 consultation on, respectively, the structure of the AC, SC, the SC caps for the 09 and 118 number ranges, and the approach to the assumed handover point and transit payments under this structure. These Annexes also present our response to the points raised.

The Access Charge

- 9.4 As set out at the beginning of Section 8, the AC represents the payment which the OCP will charge to their customers for originating non-geographic calls. Under the unbundled tariff structure, the AC will not be presented to consumers each time they make the call. It will instead be presented to them when signing up to a new telephone package and will be available as part of an OCPs' pricing information and marketing material (see Section 10 and Annex 24 where we set out the price publication requirements relating to the AC). Therefore, at the point of call, the consumer will have to remember their AC, or at least have an idea of its broad magnitude. Given this, one of our policy goals when considering what is an appropriate structure for the AC is to make it as simple as possible in order to enhance consumers' understanding.
- 9.5 In the April 2012 consultation we proposed the following in relation to the AC:
- OCPs would be able to offer ACs that vary by tariff package;
 - the same AC would apply to all calls within the 084/087, 09 and 118 number ranges but OCPs could also include it within a bundle of inclusive minutes;
 - it would be charged at a ppm rate only but OCPs will be permitted to impose a minimum call charge of up to one minute;

⁵⁴ Ofcom, *Service Charge Caps for 09 and 118 Services; consultation on maximum Service Charges for PRS and Directory Enquires services in the unbundled tariff regime*, 25 July 2012, 'the July 2012 consultation', <http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/>

- the AC will not be permitted to vary by time of day; and
- we would not apply a maximum price cap on the AC at the current time. We said, however, that we would keep the level of AC prices under review following implementation of the unbundled tariff.

9.6 We received comments from many stakeholders about these proposals (as set out in detail in Annex 20). After reviewing those comments, further engagement with stakeholders (including discussions with industry) and in light of further analysis, we intend to maintain broadly the structure for the AC set out in the April 2012 consultation (subject to the comments below). Below we set out the reasons for this, with reference to the relevant assessment criteria where they apply. We have divided the assessment into the following areas relating to the structure of the AC:

- i) varying the AC between tariff packages;
- ii) varying the AC within a tariff package;
- iii) pricing structure of the AC;
- iv) including the AC in call bundles/packages; and
- v) cap on the AC.

Varying the AC between tariff packages

9.7 In the April 2012 consultation we proposed to allow OCPs to vary the AC by tariff package because there were likely to be significant efficiency benefits in allowing OCPs to offer tariff packages that met consumers' preferences. We acknowledged that a single AC per OCP would strengthen consumer price awareness but we also noted that consumers were likely to be familiar with charges varying depending on their tariff package and therefore the impact on consumer price awareness was likely to be low.⁵⁵

9.8 The vast majority of stakeholders who responded on this point agreed that the AC should be allowed to vary by tariff package. Respondents noted that consumers were used to prices varying between packages and that the AC should not be treated differently. Several respondents commented that our approach would encourage competition and enable OCPs to tailor the level of the AC to customers' specific preferences. However, Consumer Focus and TNUK were concerned that allowing the AC to vary between tariff packages could lead to it being less transparent and memorable for consumers and therefore less likely to be subject to competition. Surgery Line also argued in favour of an AC for socially valuable services which it said should not vary by tariff package.

9.9 Given the broad support from stakeholders, we have decided not to impose a tariff principle which prevents OCPs from varying the AC between tariff packages. As we stated in the April 2012 consultation, we acknowledge that an AC which varies by tariff package will somewhat reduce consumer price awareness relative to a single AC, as highlighted by Consumer Focus and TNUK. The impact of this is likely to be small, because consumers are already familiar with prices varying between tariff packages. The price awareness benefits which might result from restricting OCPs' pricing freedom to a single AC across all tariff packages are likely to be limited, and

⁵⁵ April 2012 consultation, Part B, Section 10, paragraphs 10.4 to 10.25.

such a restriction carries a significant risk of material disadvantage in terms of efficient prices and regulatory burden, which outweigh the limited consumer benefits. We have rejected Surgery Line's suggestion for the same reasons (see Annex 19 where we set out our response to these comments in further detail).

Varying the AC within a tariff package

- 9.10 Having decided that the AC can vary depending on the tariff package offered to the consumer, we now need to consider whether that AC can vary within that tariff package. The particular issue which has been raised by stakeholders (in their responses to both the December 2010 consultation and the April 2012 consultation) is whether different ACs can be set for different non-geographic number ranges.
- 9.11 In the April 2012 consultation we rejected the option of allowing different ACs for different number ranges (in particular the idea of having one AC for 084/087 numbers and another AC for 09/118 number ranges). Whilst we recognised that there might be efficiency and cost benefits in allowing OCPs to vary the AC across number ranges, we noted these would only materialise if consumers were aware of those price differences and could act accordingly. We considered there was a significant risk of reduced consumer price awareness if OCPs were allowed to set different ACs for different number ranges, in particular we were concerned that consumers would not be aware of, or be able to recall, two different ACs as opposed to one for all non-geographic numbers. We therefore proposed to implement a tariff principle that OCPs were only allowed one AC per tariff package.⁵⁶
- 9.12 We received a number of comments from stakeholders in response to this issue, relating in particular to the following areas:
- bad debt and other differential costs associated with certain number ranges;
 - differences in consumer preferences for different number ranges; and
 - impact of a single AC on the level of prices.
- 9.13 We have set out the stakeholder comments in detail, along with our response, in Annex 20. The decision on this issue primarily involves considering the consumer price awareness and efficient prices criteria. We have set out our assessment under each of these two criteria below, taking into account the three areas identified in the paragraph above.

Consumer price awareness

- 9.14 BT and [3] agreed that prohibiting the AC to vary within tariff package was necessary to enhance consumer price awareness and ensure the success of the unbundled tariff. Vodafone also noted that multiple ACs risked undermining the transparency objective and a simpler approach was better.
- 9.15 However, several other stakeholders, including TalkTalk, UKCTA, Virgin Media and EE were opposed to our proposal for a single AC. They considered that consumers could clearly distinguish between 084/087 and 09/118 numbers and that this provided a justification for allowing different ACs for each of the two sets of number ranges. They cited as evidence the fact that consumers are able to differentiate between types of calls such as geographic and mobile calls. They considered that

⁵⁶ April 2012 consultation, Part B, Section 10, paragraphs 10.26 to 10.85.

Ofcom's own research, showing that consumers can recognise the different purpose of numbers up to the second digit of the dialled number, supported the view that it was not necessary to have a single AC across different non-geographic numbers. Similarly, they considered that our 2010 Consumer survey indicated that consumers' calling patterns on 084/087 and 09 were similar, even though they called 09 numbers less often. In their view, this meant that our concerns that competitive pressure on a separate AC for 09/118 were unfounded. In addition, some stakeholders mentioned that consumers' ability to differentiate between 084/087 and 09/118 would be promoted through the envisaged awareness campaigns and Ofcom's proposed numbering guide.

- 9.16 We agree that consumers are likely to recognise that 09 calls are more expensive than 084/087 calls, and this is supported by evidence from our consumer survey.⁵⁷ In addition, given the distinct identity of the 118 range, it seems plausible that consumers are capable of distinguishing 118 calls from 084/087 calls, although we do not have specific evidence on this point. However, whilst two ACs might still improve price awareness relative to the status quo, we consider that a single AC is likely to be more effective in reducing the extent to which consumers misperceive and are confused by the actual prices of calls to these number ranges. A single AC is likely to be more memorable to consumers, particularly for those number ranges which they call less frequently, i.e. 09 and 118. As most consumers will not have their AC in front of them at the point of call, we consider it very important to the success of the unbundled tariff in improving price awareness that consumers are able to remember at least the broad magnitude of their AC. We consider this is significantly more likely with a single AC.
- 9.17 We also consider there is a risk that the additional complexity introduced by having two ACs could undermine consumers' capacity to recall either AC clearly, even on the number ranges they call more frequently. Any communications activity which we, and others, undertake is likely to be significantly more efficient if the message is kept simple and a single AC is a key factor in achieving that objective. In particular, SPs advertising messages would have an additional level of complexity, because they would have to specify which AC applied to the call, e.g. "This call will cost you £1 per minute plus your phone company's 09 access charge".
- 9.18 Therefore, we provisionally conclude that allowing the AC to vary by number range would be likely to lead to materially lower consumer price awareness than a single AC.

Efficient prices

- 9.19 Several stakeholders, including [redacted], Vodafone, CWW, TNUK, FCS and FTC considered that higher bad debt costs on certain number ranges (i.e. 09) did not justify allowing for a differentiated AC.
- 9.20 Other respondents, including Sky, Three, UKCTA, Virgin Media and EE, considered that a separate AC for 09/118 would lead to more efficient prices, because OCPs would be able to better reflect the underlying costs of each number range and, in particular, bad debt costs. They argued that the existence of bad debt had been acknowledged by Ofcom in allowing BT to recover the PRS Bad Debt Surcharge on its NTS retail revenue under the NTS Call Origination Condition. In addition, EE and UKCTA noted that the costs to some premium rate numbers were further increased

⁵⁷ For example, the mean expected price given by respondents to the 2011 Consumer survey was higher for 09 calls than for 08 (questions 43 and 44).

by the requirement of a PCA warning callers of the cost of the call, which resulted in costly aborted calls. EE argued that as Ofcom had recognised that the majority of stakeholders who responded to the December 2010 consultation were opposed to our proposals we should exercise extreme caution in proceeding with this approach.

- 9.21 In addition, several stakeholders, including many of the OCPs, argued that a single ppm rate for all NGCs was likely to force OCPs to set an average AC higher than that which would otherwise be set for calls to the 084 and 087 numbers. EE and UKCTA said this would not be a favourable outcome for consumers, especially when 08 numbers were some of the most popular in the entire NGC range, used to contact a wider range of both socially important and commercially significant SPs.
- 9.22 We have previously recognised that there are higher bad debt costs associated with calls to 09 numbers.⁵⁸ However, we consider that the 5.2% allowance for BT's bad debt costs is likely to be an overestimate of both mobile and other fixed CPs' bad debt costs, as it is in part due to BT's particular position in the market and its Universal Service Obligations. In addition we are concerned that a separate AC for 09/118 numbers might be set inefficiently as a result of the lower consumer price awareness created by having two ACs rather than one (as outlined in paragraphs 9.14 to 9.18 above) and the fact that consumers call these numbers less often than 084/087 numbers.
- 9.23 The impact on pricing efficiency depends on the extent to which a single AC leads to higher prices of 084/087 calls, as several stakeholders have argued. In the April 2012 consultation we estimated that a single AC would be 17% higher than a separate AC for 084/087 fixed calls, and 8% higher for mobile calls.⁵⁹ These estimates reflected the maximum potential difference because they were based on OCPs' current retention, whereas we expect the unbundled tariff to encourage greater competition on the level of the AC. This should reduce the level of retention, as well as providing incentives on OCPs to improve their credit management practices and minimise bad debt costs.
- 9.24 Overall, we recognise that the available evidence suggests that a separate AC for 09/118 calls could result in a more efficient outcome than a single AC across the other non-geographic ranges. However, we also consider that there is reason to believe that any such efficiency benefits may not be material, particularly given the greater competition we expect between OCPs under the unbundled tariff.

Conclusion on allowing the AC to vary within tariff packages

- 9.25 Taking our conclusions on the two criteria together, we find that reaching a position on allowing the AC to vary within tariff packages requires a trade-off between consumer price awareness and efficient prices. On the one hand, separate ACs will make it harder for consumers to be aware of prices compared to a single AC which applies to all number ranges. On the other, two separate ACs may enable greater efficiency (assuming consumers can reflect ACs in their decisions effectively). Given that improving consumers' price awareness is central to our concerns about the retail market for calls, we place more weight on the risk that two ACs could materially reduce price awareness than we do on the risk that a single AC could lead to less efficient pricing. As a result, although we recognise there are arguments on both

⁵⁸ BT's PRS Bad Debt surcharge is set at 5.2%.

⁵⁹ In particular we estimated that the fixed AC across all NGCs would be 2.9ppm, compared to a 2.4ppm rate for an 084/087 AC, and for mobile this was 16.1ppm compared to 14.8ppm for an 084/087 AC. See Table 10.2 in Section 10 of the April 2012 consultation.

sides, we consider that the benefits of a single AC in terms of transparency of prices and, through this, the overall effectiveness of the unbundled tariff are likely to outweigh any increase in prices resulting from a single AC for 084/087 and 09 numbers.

- 9.26 We therefore conclude that regulation should require that OCPs shall only have one AC per tariff package and will not be permitted to vary that AC by number range.

Pricing structure of the AC

- 9.27 Retail charges for non-geographic calls can currently be expressed in number of different ways, including:

- pence per minute ('ppm');
- pence per call ('ppc'), also referred to as 'fixed fee' or 'drop-charging'; and
- a combination of both, e.g. a ppc amount, such as a call set-up fee, plus a ppm rate.

- 9.28 The ppm structure is the most common,⁶⁰ although a number of fixed CPs in particular often charge a call-set up fee on top of the ppm amount.⁶¹ Some of the differing pricing structures reflect the underlying wholesale termination rates, but others (such as call-set up fees) have no wholesale equivalent.

- 9.29 In the April 2012 consultation we considered that allowing ACs to vary in structure between OCPs would undermine price awareness, as consumers were unlikely to be able to recall and compare such ACs across packages and OCPs. We explained that the different treatment of ACs compared to SCs (where we proposed to allow different charging structures) was justified because we were proposing to impose price transparency obligations on SPs and greater flexibility of charges was needed to reflect the diversity of services offered by SPs on NGCs (whereas the essential services OCPs are providing is the same, namely the origination of the call). We considered, however, that there was merit in allowing OCPs to specify a minimum call charge option that is linked to the ppm charge, recognising stakeholders' concerns that where the call is short, a ppm charge may not cover the costs of origination. We therefore provisionally concluded that the AC should be structured on a uniform basis by OCPs and that a minimum call charge equivalent to the price of a one minute call was appropriate.⁶²

- 9.30 Stakeholders expressed a range of views on the issue of the pricing structure of the AC in response to the April 2012 consultation (see Annex 20). Several stakeholders, including Three, Vodafone, CWW, TNUK, FCS and FTC broadly agreed with our proposals, considering that a uniform charging structure would promote price transparency. Some of these stakeholders (TNUK and FCS) questioned, however, whether a minimum call charge was necessary, suggesting that a one minute minimum was likely to be longer than needed.

⁶⁰ See paragraph 10.100 of the April 2012 consultation where we set out evidence of current charging approaches.

⁶¹ For example, under BT's Unlimited Weekend Plan there is a 13.87p call set-up fee for each out of bundle 0845 call:
http://www.productsandservices.bt.com/consumer/assets/downloads/BT_PhoneTariff_Residential.pdf.

In addition, Sky's Anytime Talk package charges a 13.87p call set-up fee for 0845 numbers.

⁶² See paragraphs 10.86 to 10.113 of the April 2012 consultation for our position on the pricing structure of the AC.

- 9.31 On the other hand, several stakeholders, including Virgin Media, Sky, UKCTA and BT argued that we should allow call set-up fees on the AC because they were permitted on other types of calls and our prohibition would eliminate the charging consistency between these calls. Virgin Media also argued that our proposal was likely to unduly penalise callers who made longer calls. Finally, EE considered that our approach would eliminate the possibility of fixed rate (i.e. price per call) charges, which had clear benefits to consumers (e.g. certainty of price regardless of duration of call).
- 9.32 We acknowledge the arguments for and against allowing call set-up fees. We consider that OCPs should be allowed to recover the costs of setting up calls. The relevant question is: to what extent is it necessary to regulate the mechanism used to recover these costs (given the analysis of consumer harm in these markets and our objective to address that harm)? A one minute minimum call charge strikes a balance between the two assessment criteria that are most relevant to this issue, namely, consumer price awareness and efficiency of prices.
- 9.33 We recognise that a call set-up fee may be more efficient because it may better reflect the underlying cost of connecting the call. In terms of consumer price awareness, call-set up fees are likely to be harder for callers to remember because they involve two price points, rather than one. Whilst the existence of such call set-up fees already in the market may indicate that consumers are familiar with such charges, we are concerned that, particularly in the context of the introduction of the unbundled tariff, they may reduce consumer price awareness of the AC and undermine the simplicity of the price message to the consumers.⁶³ As set out earlier, maximising the simplicity of the AC in order to enhance consumer understanding is one of our key objectives with the structure of the AC.
- 9.34 For the same reasons we also consider that allowing 'per call' charging of the AC is not in the interests of consumer price awareness. We consider that the benefits of such charging are likely to be limited in any case, given that it is used relatively infrequently for non-geographic calls currently.⁶⁴ Again, there are price efficiency arguments in favour of per call ACs, however, we are placing more weight on the consumer price awareness benefits of a single charging structure for the AC.
- 9.35 We therefore consider that we should impose a tariff principle which restricts OCPs to charging ACs on a pence per minute basis, with an allowance for the OCP to charge a one minute minimum call charge.

Time of day/day of the week variations on the AC

- 9.36 In the April 2012 consultation we said that introducing time of day ('ToD') variations could increase significantly the number of prices that consumers would need to remember and that this was likely to undermine consumer price awareness. We therefore proposed that price awareness considerations outweighed any efficiency

⁶³ We noted the potential for tariff complexity to act as a barrier to accessibility of the market in our recent review of consumer information remedies, available here: <http://stakeholders.ofcom.org.uk/binaries/research/research-publications/information-remedies.pdf>.

In particular we noted there that

⁶⁴ See paragraph 10.100 of the April 2012 consultation. In addition, we are aware that none of the four main mobile OCPs currently charge 084/087 calls on a pence per call basis. Pence per call charges are more common on 09 and 118 numbers, although they are still less common than ppm charging.

benefits of ToD variations and that the AC should be charged on a uniform basis at all times of the day.⁶⁵

- 9.37 Virtually all respondents agreed that Ofcom should prohibit time of day variations on the AC. Many respondents noted the importance of keeping the AC as simple as possible in order to avoid confusion and others suggested that the need to manage network capacity with such variations was no longer significant. The exception was BT, who argued that because time of day (and day of the week) variation was standard across industry for other call types, it should be allowed for the AC as well. One confidential respondent also urged that this restriction on time of day charging should not have implications for the wider market, because it argued that these variations were still important for other call types.
- 9.38 Taking into account these submissions, we conclude that we should impose a tariff principle which prevents OCPs from varying the AC by the time of day. We note BT's objection, but allowing ToD variations risks a multiplicity of price points for the AC, which would reduce consumer price awareness. ToD variations have the potential to confuse consumers, particularly as OCPs and SPs do not operate consistent definitions of peak and off-peak periods. Such variations can triple the number of prices that consumers will need to remember (namely the day, evening and weekend AC). We see no strong evidence that ToD variations are justified in terms of efficient pricing, because the relatively low volumes of NGCs (relative to the total number of all call types) means their impact on traffic management is not significant.⁶⁶ For the avoidance of doubt, this tariff principle will only apply to the AC for non-geographic calls and does not therefore have implications for the wider market.
- 9.39 We consider that the same reasoning above applies to variations on the AC by day of the week (for example having a different AC at weekends/weekdays), although we did not refer to this specifically in the April 2012 consultation. The tariff principle on the AC which we are proposing in the modifications to GC17 (see Section 6) will therefore also prevent variations by day of the week.

Inclusion of the AC in call bundles/packages

- 9.40 We now turn to the question of whether, and how, ACs should be included in OCPs bundles of inclusive minutes ('call bundles').
- 9.41 In the April 2012 consultation we considered that inclusion of the AC in a call bundle did not cause significant concerns about pricing complexity, as consumers had experience of this type of pricing and they increasingly purchased call bundles. We were nonetheless concerned that if the inclusion of the AC in the bundle was confined only to some number ranges it would undermine consumer price awareness, and would be very similar to having separate AC for different number ranges. We therefore provisionally concluded that we should allow OCPs to include ACs in call bundles provided they did not differentiate by number range.⁶⁷
- 9.42 Respondents broadly agreed that ACs should be permitted to be included within call bundles. Magrathea and TNUK in fact argued that we should make this a requirement rather than an option. However, a number of OCPs argued against the

⁶⁵ See paragraphs 10.114 to 10.129 of the April 2012 consultation for our position on time of day variations of the AC.

⁶⁶ As discussed in paragraphs 10.124 -10.128 of the April 2012 consultation

⁶⁷ See paragraphs 10.130 to 10.145 of the April 2012 consultation for our position on inclusion of ACs in bundles.

requirement that inclusion in bundles should not be allowed to differentiate by number range. O2 argued that this would be too restrictive of OCPs' pricing flexibility. BT, UKCTA and EE noted that it would prevent current pricing practices where 0845 and 0870 numbers were included in bundles but other ranges were not. In addition, these respondents highlighted that some OCPs might want to include the SC as well as the AC for these number ranges, but Ofcom's current proposal would prevent that practice. On the other hand, some other respondents (FCS, THA and TNUK) were concerned that it would be confusing for consumers if the inclusion of the AC varied by number range, in particular it could lead to a 'back-door' for OCPs to charge different ACs for different number ranges.

- 9.43 The unbundled tariff model being adopted in France has mandated the inclusion of the AC element within call bundles (as well as restricting the AC to geographic call charges).⁶⁸ In the context of capping the AC at geographic rates the requirement for including it within call bundles may be an attractive option (we discuss this option in further detail below under the cap on the AC heading). However, we are concerned that mandating the inclusion of the AC within bundles would be too restrictive of OCPs' pricing flexibility. In particular, it would limit OCPs' ability to tailor packages to different consumer preferences regarding price differentials between NGCs and other types of calls. For example, there may be consumers who prefer to purchase a call bundle with a higher number of minutes to geographic numbers than one that includes non-geographic numbers and a lower number of minutes to other types of calls. In the event that consumer awareness of the AC does not prove to be sufficient for them to express these preferences, we may reconsider this position and revisit whether a requirement to include the AC within bundles is justified.
- 9.44 For the same reasons as set out above relating the requirement for OCPs to charge a single AC per tariff package, allowing OCPs to vary the inclusion of the AC in bundles depending on the number range would reduce consumer price awareness and any improvements in efficiency would not be sufficient to offset that reduction in price awareness. If we allowed differentiation by number range this could be used to circumvent our restriction on the variations of ACs by tariff package. Restrictions on the differentiation of the AC may result in some OCPs no longer including calls to 0845 and 0870 numbers in bundles, as some currently do. Other OCPs may choose to include the AC for all NGCs in their bundles. We do not consider this will result in consumers paying more overall for non-geographic calls, although charges in the relative prices of calls to specific number ranges may change as CPs amend their pricing structures in line with the single AC requirement.
- 9.45 In relation to the inclusion of both the SC and AC within bundles, we note that our tariff principles will allow OCPs to include both charges within bundles, as long as they do not differentiate the inclusion of the AC by number range.. Therefore there will still be some flexibility for OCPs in tailoring their bundled call packages to meet consumer preferences.
- 9.46 We therefore consider that we should allow CPs the option of including their ACs within the price of call bundles provided that applies to all number ranges subject to the unbundled tariff and OCPs do not differentiate that AC inclusion by number range.

⁶⁸ See Section 2 paragraphs 2.41 to 2.43 where we discuss this. Also see: http://www.arcep.fr/uploads/tx_gsavis/12-0856.pdf

Cap on the AC

- 9.47 We considered the issue of whether to impose a cap on the level of the AC in some detail in the April 2012 consultation. We considered that there were risks of regulatory failure associated with setting a cap and that these were likely to outweigh the benefits of setting a cap. In particular, we were concerned that the cap could operate as a “focal point”, with OCPs choosing to price at or close to the maximum. We therefore provisionally concluded in the April 2012 consultation that we should not set a cap on the AC but that we would remain open to revisiting the need for a cap if evidence of consumer confusion in relation to the AC was to emerge.⁶⁹
- 9.48 Responses on this issue were divided. Several respondents agreed with Ofcom’s preference that the AC should not be capped, including the majority of OCPs (fixed and mobile). These OCPs considered that the transparency achieved through the unbundled tariff structure would be sufficient to ensure that the AC would be effectively constrained by competition between OCPs. Others argued that imposing a cap on the AC carried a risk of regulatory failure and was overly intrusive. A couple of respondents (Three and EE in particular) argued that Ofcom did not have the legal powers to impose a cap on the AC absent a finding of SMP.
- 9.49 Several respondents argued that competition on the AC was unlikely to emerge. In particular they considered that consumers were unlikely to select their OCP on the basis of NGC charges and suggested that a cap on the AC would improve consumer price awareness. Views differed as to what the exact level of this cap should be. CWW argued in favour of a temporary cap of the AC at geographic rates, a confidential respondent said there should be a safeguard cap at current retention levels, whereas Magrathea argued that it should be capped at the same level as the mobile origination charge for Freephone numbers.
- 9.50 We recognise that there are arguments on both sides and this was reflected in our assessment in the April 2012 consultation. We disagree with the comments that we do not have the legal powers to impose a cap on the AC absent a finding of SMP for the reasons set out in Annex 13, paragraphs A13.47 to A13.49. We note that a similar model to the unbundled tariff is being implemented in France (using the same legal framework) where the AC is being capped at geographic rates with a requirement for it to be included in call bundles (where such bundles are part of the consumers’ call package)⁷⁰ and this was also recognised as a promising approach by a recent BEREC report.⁷¹
- 9.51 A cap on the AC in line with geographic charges could improve consumer price awareness, given that consumers may be more aware of these charges as they make them more frequently. Whether other types of cap would improve consumer price awareness is less clear, given that it would not necessarily provide useful information to the consumer about the actual level of the AC they would pay (for example a safeguard cap would probably be set much higher than the AC actually charged to a consumer as part of their package). In terms of efficient prices, if there are sufficient competitive pressures on the AC then this should encourage ACs to develop which reflect consumer preferences and therefore encourage efficiency. In

⁶⁹ See paragraphs 10.146 to 10.193 of the April 2012 consultation for our position on setting a cap on ACs.

⁷⁰ http://www.arcep.fr/uploads/tx_gsavis/12-0856.pdf

⁷¹ BEREC, *Report on Special Rate Services*, 24 May 2012,

http://berec.europa.eu/eng/document_register/subject_matter/berec/reports/338-berec-report-on-special-rate-services

that case, there is a risk that a cap on the AC could distort retail prices inefficiently for example by acting as a 'focal point' around which OCPs set their AC. Finally, in terms of regulatory burden, setting a cap would have a higher risk of regulatory failure, in particular a risk that we set a cap that does not reflect consumer preferences.

- 9.52 Having weighed up the various factors, we conclude that, at this stage, we should not set a cap on the AC. Introducing a cap now would be justified if there was evidence that the introduction of the unbundled tariff would not be sufficient to provide an adequate level of consumer protection. We expect, however, that the unbundled tariff structure as a whole is likely to improve consumer price awareness of NGC charges. Consumers will be able to understand and utilise the AC in a way that should therefore allow competition to constrain charges in the long term.
- 9.53 Nevertheless, we will consider the introduction of a cap based on geographic rates, or any other measure, in future if evidence emerges of continuing consumer confusion, which could inhibit the development of competition. We intend to monitor market developments closely, including consumer understanding of the AC, particularly during the early phases of implementation. This will form one of the elements we will consider as part of our review after implementation of the unbundled tariff (see Section 5 for more details).

Summary of approach to the AC

- 9.54 Therefore, in line with our proposal in the April 2012 consultation, our view is that the following should apply to the AC:
- OCPs will be able to offer ACs that vary by tariff package;
 - it will apply to all calls within the 084/087, 09 and 118 number ranges but OCPs can also include it within a bundle of inclusive minutes so long as that inclusion does not vary by number range;
 - it will be charged at a ppm rate only but OCPs will be permitted to impose a minimum call charge of up to one minute;
 - it will not be permitted to vary by time of day; and
 - there will be no maximum price cap on the AC at the current time but we will monitor consumer understanding of the AC following implementation of the unbundled tariff and will review this position after implementation.
- 9.55 The practical effect of these requirements in combination is that every consumer will be able to find out 'their' AC, that applies at all times, in a simple pence per minute rate. Although this means restricting providers' flexibility to offer more complex price options, we expect that, for those consumers who wish to engage, it will be easier to recall this price when deciding whether to respond to, for example, marketing material from an SP urging them to call a non-geographic number.
- 9.56 In order to give effect to these tariff principles on the AC we are proposing to make a number of modifications to GC17 and the Numbering Plan. We have set out the proposed modifications in Section 6 and Annexes 14 to 15.

The service charge

- 9.57 The SC will represent the payment which goes to the TCP and covers their costs of handling the call, as well as the hosting service they provide to the SP providing the service on that non-geographic number. In addition, the SC will fund any revenue-sharing arrangements between the TCP and SP.
- 9.58 Unlike the AC, consumers will be told the SC in any promotion of the number (see Section 10 below). Therefore the need for simplicity does not drive the decisions on structure to the extent it did for the AC, because we expect the majority of consumers to have the number and SC in front of them when making the call. In addition, the commercial demands of the diverse range of services provided by SPs on NGCs means that a certain level of flexibility in pricing structure is required to encourage service variability, competition and innovation. However, simplicity is still important. We want the structure to allow consumers to gain an understanding of the potential magnitude of different SCs for different number ranges and to ensure that it remains readily understandable to consumers. This will be particularly important for those consumers who do not have the SC in front of them when making a call.
- 9.59 In the April 2012 consultation we proposed the following in relation to the SC:
- bespoke SCs should be prohibited;
 - no other tariff principles in relation to the setting of the SC would be imposed on CPs (for example no restrictions on ppm, ppc or ToD charging);
 - SC maximum of 5.833 pence for the 084 range and 10.83 pence for the 087 range (in both cases, exclusive of VAT).⁷² We consulted separately on maxima for the 09 and 118 ranges (see paragraphs 9.87 to 9.110 below); and
 - with respect to the number of SC price points within OCPs' billing systems, we proposed that there should be a minimum number that they would be required to provide. We said this would be in the range of 60-100 and the process for agreeing the specific price points would be for industry.
- 9.60 In our July 2012 consultation⁷³ we also proposed the following:
- a cap on the SC of £5 per call and £3 per minute for 09 and 118 numbers.
- 9.61 We received a number of comments from stakeholders about these proposals (as set out in detail in Annex 21 and Annex 22). After considering those submissions, we have made some amendments to our approach, in particular in relation to the time of day variation on the SC and the cap on the 118 SC. Below we set out the assessment and evidence to support the decision we are minded to take on each of the areas relating to the structure of the SC:
- i) bespoke SCs;
 - ii) pricing structure of the SC;
 - iii) time of day variation on the SC;

⁷² At the current VAT rate of 20% these caps equate to 7p and 13p respectively.

⁷³ Ofcom, *Service Charge Caps for 09 and 118 services*, 25 July 2012 ('the July 2012 consultation'), available at: <http://stakeholders.ofcom.org.uk/consultations/service-charge-caps/>.

- iv) maximum SC caps (including 084/087, 09, 118 and the treatment of VAT); and
- v) SC price points.

Bespoke SCs

- 9.62 By 'bespoke SCs' we mean SCs which can vary depending on the identity of the OCP which a consumer uses to make a non-geographic call. In the April 2012 consultation we proposed that it would not be appropriate to allow bespoke pricing for SCs, noting that they would make the unbundled tariff more complex because it would make it difficult for SPs to advertise a specific SC to their customers.⁷⁴
- 9.63 All stakeholders who responded on this point agreed that bespoke SCs should be prohibited. Some respondents highlighted that Ofcom's legal instruments needed to make clear that this prohibition of bespoke SCs also meant that any form of tiered termination rates (or ladder charging) would be prohibited. FCS suggested that the prohibition should exclude subscription services, to allow pricing flexibility and innovation for SPs offering these types of service.
- 9.64 Bespoke SCs would make the unbundled tariff more complex and would undermine a key element of the unbundled tariff which will address consumer price awareness; that is the ability of the SP to advertise a single price to its customers throughout the UK. On that basis, and given the widespread support of stakeholders, we have decided to impose a tariff principle which prohibits the existence of bespoke SCs. The wording of the proposed modification to General Condition 17 to give effect to this requirement is set out in Annex 14 (see also Section 6). This requirement will remove the scope for TCPs to set variable termination rates.
- 9.65 We have considered the suggestion from FCS for an exemption for subscription services but we are concerned that such an exemption could prejudice price transparency by increasing the complexity of the pricing message. Such an exemption is not necessary, because TCPs/SPs can offer access to their services at lower prices to subscription customers through a lower SC, provided they have separate numbers for each SC price point. There is also potential for TCPs to negotiate the inclusion by the OCPs of particular numbers in bundles, or other discount arrangements in relation to the SC.

Pricing structure of the SC

- 9.66 There are a number of different ways in which call charges can be structured. For clarity, when referring to ppc, ppm and set up fee below (and in later sections) we mean the following:
- a price per call ('ppc') tariff indicates the total price charged for a call to a number, which is independent from the duration of the call (i.e. a drop charge, fixed fee or one-off payment which does not change depending on the length of the call);
 - a price per minute ('ppm') indicates the price charged for every minute of the call. A difference compared to the price per call structure is that the price per minute does not reflect the total price of the call. The total price will depend on the duration of the call; and

⁷⁴ See paragraphs 10.197 to 10.221 of the April 2012 consultation for our position on bespoke SCs.

- a call set-up fee is a one-off charge applied when a call is connected. A separate ppm charge is applied for each minute of the call, in line with the ppm description above.
- 9.67 We provisionally concluded in the April 2012 consultation that the benefits of allowing both ppm and ppc variations in the SC, in terms of flexibility to SPs to support different business models and the efficiency of SPs' prices, were likely to outweigh any increase in tariff complexity and associated impact on consumer transparency and awareness. We recognised, however, that there might be billing system issues that would need to be resolved if both ppm and ppc SCs were allowed. We said we would look to industry to identify and seek to resolve these issues, in the same way as we had identified for time of day variations.
- 9.68 The majority of stakeholders agreed that no further restrictions on the charging structure of the SC were required. The THA was concerned, however, that a ppc charging structure could be confusing to consumers. BT and EE also raised some concerns about the OCP not being liable for any additional costs under a ppc SC. We have responded to these specific points in Annex 21.
- 9.69 We expect that the majority of consumers should have a statement of the SC in front of them when they make a NGC⁷⁵ and therefore the SP will be able to make clear in its advertising whether that SC is a ppm or a ppc rate (or any other variation thereof). Therefore whilst we recognise that different charging models introduce some additional complexity for the consumer, we consider that because of the requirement to advertise the SC to the consumer, the potential impact of this complexity is limited. We also note there is demand for different charging models on the SC (particularly on the 09 and 118 number ranges) and it offers benefits in terms of efficient pricing by providing flexibility to SPs. In turn, this will provide greater choice to consumers. We consider these benefits outweigh any limited impact on consumer price awareness. On that basis we have provisionally concluded we should not to impose any tariff principles restricting the charging rate of the SC.

Time of day/day of the week variation on the SC

- 9.70 In the April 2012 consultation we said that the potential benefits of time of day variation, in terms of flexibility for TCPs/SPs and the potential for future competition and innovation, outweighed any concerns we had in relation to consumer price awareness. Therefore, we considered it was not appropriate to impose a rule prohibiting such variation in the SC. However, we noted that time of day variations would need to compete with other tariffs in terms of the limited number of price points that would be available for the SC. We said we would look to industry to agree any time of day variations in the SC and to implement them in a way which avoided unnecessary costs.⁷⁶
- 9.71 Only Magrathea and CWW indicated support for ToD variations on the SC, noting that they could be important to SPs to reflect the greater diversity of their services. The majority of respondents believed that ToD variations should be prohibited on the SC as well as the AC (including BT and all the MNOs as well as TNUK). In particular these respondents were concerned that it would be impractical given the overall

⁷⁵ In the 2011 Consumer survey, 65% of respondents said they had obtained the telephone number for the last company or public organisation they had called from a source which would allow the SP to advertise the SC for that call (Question GL14).

⁷⁶ See paragraphs 10.222 to 10.247 of the April 2012 consultation for our position on time of day variation in the SC.

limits on the number of price points, because each ToD variation would create an additional price point. Concerns were also raised by some respondents about the potential for consumer confusion, because of the greater pricing complexity created by ToD variations.

- 9.72 We have reconsidered our position on this issue in light of stakeholder comments. In terms of consumer price awareness, we agree that the message to consumers about the SC for a particular call will be more complex if it features ToD variations. For example, rather than saying “this call will cost you Xp plus your access charge”, the message could be something like “this call will cost you Xp during the day, and Xp in the evening, plus your access charge”. This is inevitably more difficult for consumers to take in, given that it involves more price points to remember. In addition, an additional risk of confusion arises because there is no standard definition of ‘evening’ or ‘daytime’ calls.
- 9.73 Although there was some support from stakeholders for the view that ToD variations could offer benefits to SPs in terms of pricing flexibility, it has been very limited (and we note that it has not been advocated by any of the SPs which are not also CPs responding to the consultation). Instead the weight of stakeholder responses have focussed on the potential harm that ToD variations might lead to, not only the reduced price awareness but also the likely difficulties of implementing these variations in practice. Each ToD variation would take up an additional price point and there would need to be a consistent definition of ToD variations across the industry to avoid significant additional billing costs for OCPs.
- 9.74 Accordingly, we conclude that allowing the SC to vary by ToD has drawbacks which outweigh the potential benefits (for which there has been limited stakeholder support). On that basis we have consider we should set a tariff principle which prevents SPs from varying their SC by the time of day.
- 9.75 Although we did not refer to this issue specifically in the April 2012 consultation, we consider the same reasoning above applies to variations on the SC by day of the week (e.g. different SCs set for weekends/weekdays). The tariff principle we are proposing to set for the SC in GC17 (see Section 6) will therefore also prevent such variations.

Maximum SC caps

VAT

- 9.76 Before we consider the level of any SC caps we first need to address the question of whether the caps will be set inclusive or exclusive of VAT in the Numbering Plan. Whilst all prices advertised to consumers are required to be presented inclusive of VAT, we currently set prices in the Numbering Plan (for BT tariffs) exclusive of VAT. This means that if there is a change in the VAT rate, BT can decide how to implement this in its retail prices and there is no requirement for Ofcom to consult on changes to those caps.
- 9.77 In the April 2012 consultation we proposed to set the 084 and 087 SC maxima exclusive of VAT. We said this would remove the impact of VAT fluctuations on the levels of the SC and provide certainty to industry as to the maximum for a given number range.⁷⁷ In July 2012 we published a separate consultation on proposed SC caps for the 09 and 118 SC number ranges and in that consultation we said the caps

⁷⁷ April 2012 consultation, Part B, pp.148-151.

should be set exclusive of VAT for the same reasons (see paragraphs 9.87 to 9.108 below where we set out in more detail the proposals in the July 2012 consultation, as well as our position on those caps).⁷⁸

- 9.78 Most respondents agreed with our proposed approach, noting it provided more flexibility to SPs. FTC and CAB, however, suggested that any VAT inclusive SCs advertised to consumers should be round numbers and the THA also argued that SCs should be set inclusive of VAT to avoid price inflation in the event of a VAT rate change.
- 9.79 We consider that setting the SCs caps exclusive of VAT is the most sensible approach because it offers certainty to the industry and does not require Ofcom to revisit the caps in the Numbering Plan each time the VAT rate is changed. The SC caps which we have provisionally decided to impose for the 084, 087 and 09 numbers (discussed in the paragraphs below) are at rates which can be expressed in round numbers based on the current VAT rate (e.g. the cap of 5.833p for the 084 range will equate to a 7p SC for the consumer).
- 9.80 We are also proposing (set out below under the SC price points heading) to impose a requirement on OCPs, that SC price points will have to be set in a minimum of 1p increments. If we decide to implement this requirement, it will mean that all SCs are likely to be round numbers.

084 and 087 caps

- 9.81 In the April 2012 consultation, we said there was value in setting maximum SCs. We emphasised that the intention of this maximum would not be to restrict revenue and address weak competition, but instead to enable consumers (and SPs) to gain an intuition as to the price of calling services on a given non-geographic number range. We noted that we wanted to limit negative impacts on TCP/SP revenue in setting these maximum caps, in order limit potential disruption and migration away from number ranges. Therefore, we proposed to keep the caps in line with the current maximum wholesale termination rates, which would enable a revenue-neutral approach for TCPs/SPs.⁷⁹
- 9.82 Virtually all respondents, including both fixed and mobile CPs, agreed that maximum SC caps should be set for the 084 and 087 ranges, in the interests of protecting the identity of these ranges. Respondents noted that the caps would assist consumers in identifying the likely cost of calls, and would ensure that a distinction was maintained in the pricing of the ranges. Most respondents also agreed with Ofcom's proposal to set the caps based on the current wholesale rates. A few stakeholders highlighted that the caps should be based on the rates at the time of implementation, rather than the date that Ofcom published its final statement. Some respondents, including ITSPA, suggested a process for reviewing the caps should be set up, to ensure they did not become eroded by inflation.
- 9.83 We agree with stakeholders that SC caps on the 084/087 ranges will provide benefits in relation to consumer price awareness: they will ensure that consumers will receive consistent pricing messages for the ranges (because all SCs advertised for a given

⁷⁸ July 2012 consultation, pp.38-39.

⁷⁹ This was the g6 5p chargeband for 084 and the g7 10p chargeband taken from BT's NTS Calculator which is regulated under the NTS Call Origination Condition. See Table 10.4 of the April 2012 consultation (Part B, p.152). Historically, the same termination rate has usually been charged by other call originators for the same call types.

range will be at or below the cap) and will allow Ofcom and other bodies to provide pricing guides. Having caps for each of the 084 and 087 ranges is also consistent with the evidence that some consumers are able to distinguish between these ranges.⁸⁰

- 9.84 There is also support for setting the caps at existing maximum wholesale rates for each of the 084 and 087 ranges. By preserving revenues at the current rates SPs are receiving, this will minimise the risk of services being withdrawn abruptly. We have responded to the arguments regarding a need for the rates to reflect wholesale prices at the point of implementation and for these caps to be reviewed in Annex 21. Our response in that Annex also notes the impact of the changes proposed to termination rates in our recent consultation on the Narrowband Market Review. In summary, we note that the changes are likely to have a limited impact on the SC caps we are proposing. The most significant impact is likely to be on the termination rates for 0845 numbers, which we expect to reduce from current levels. Given that these rates are already lower than the 5.833p cap we intend to impose for SCs on the 084 range it does not appear that the level of the cap should have an impact. We consider that to enable TCPs/SPs to have enough time to consider the implications of the unbundled tariff for them, and to achieve simplicity of prices, it is preferable to keep the level of these caps in line with current wholesale rates, and to keep them relatively stable. We accept, nevertheless, that there may be a need to review the level of the caps at some point in the future.
- 9.85 There was some concern from some respondents about the potential for the 084/087 caps to appear as price inflation to consumers. FCS suggested that prices for some ranges could rise considerably. Surgery Line and THA also noted concerns that, depending on the level of the AC, consumers could end up paying more than currently.
- 9.86 We have responded to these concerns in more detail in Annex 22. The SC caps represent the maximum SC that a customer will pay for these ranges; in practice the SC could be lower (and for the 0845 and 0870 ranges that is particularly likely to be the case, given existing wholesale rates for these numbers). We disagree that this could appear as price inflation to consumers given the poor price awareness that exists currently and the tendency to overestimate prices on these ranges. We expect that, overall, this will lead consumers to discover that prices for calls to these ranges are cheaper than they believed rather than more expensive. In addition, as discussed earlier in Section 8 we consider that the transparency created by the unbundled tariff structure is likely to encourage competition in NGC pricing, which could introduce a greater downward pressure those prices (albeit this pressure may be lower on the 084/087 ranges compared to 09 and 118 which have a lower proportion of locked-in calls). For the 0870 range in particular, TCPs/SPs will also need to bear in mind that if they select an SC price point higher than the cap of 5.833p, they will, contrary to the current position, be captured by the PRS Condition (see our proposed modifications in Section 6) and will therefore be subject to regulation by PPP.

09 and 118 caps

- 9.87 In July 2012 we consulted separately on the issue of the SC caps for the 118 and 09 ranges. This was because, as we noted in the April 2012 consultation, different considerations were relevant to the imposition of these caps from those taken into account in proposing caps for 084/087. In addition, we considered it was necessary

⁸⁰ See paragraph 10.303 of the April 2012 consultation.

to assess whether additional consumer protection measures might be required if we were to increase the level of the caps as currently specified in the designation of 09 services in the Numbering Plan (i.e. a maximum price of £1.53 per minute or per call (including VAT) for 09 calls made by BT customers).⁸¹

9.88 We set out a more detailed summary of our July 2012 consultation proposals, stakeholder comments and our response to those comments in Annex 21. Below we have summarised each of these, and the decisions we are minded to take, under the following headings:

- need for 09/118 SC caps;
- level of the 09 SC cap;
- additional consumer protection measures; and
- review and implementation timing of the 09 SC cap.

Need for a SC cap on for 09 and 118 number ranges

9.89 In the July 2012 consultation, we proposed imposing a maximum SC cap on 09 numbers as this would improve consumer confidence and price awareness of these numbers by supporting the wider benefits associated with the introduction of the unbundled tariff, and would thus be likely to increase consumer demand and promote innovation by SPs. In addition, we noted that a cap for these services would limit consumers' exposure to bill shock and risk of fraud, as well as limiting the extent of consumer bad debt and the distorting effect that this could have on OCP's ACs. In terms of the 118 range, we considered that the key concerns which gave rise to our proposal to impose maximum SC caps on 09 numbers similarly applied to 118 DQ services.⁸²

9.90 The majority of respondents to the July 2012 consultation agreed that there should be a cap on the maximum level of the 09 SC, although a number of respondents questioned whether a cap would improve consumer price transparency or awareness.

9.91 As set out in the July 2012 consultation, we consider that most of our concerns about price transparency will be addressed through the implementation of the unbundled tariff. However, a SC cap on the 09 number range will have a value in assisting consumers to make a reasonable estimate of the maximum price they will pay for a particular call (which will be particularly relevant for those who do not have promotional material stating the level of the SC price in front of them at the point of call). We consider this will be particularly important in the initial implementation period, when consumers may not yet be familiar with the price structure of the unbundled tariff and associated price transparency measures.

9.92 We also consider that a cap will mitigate the scope of an increase in the risk of fraud, bill shock and bad debt that might otherwise materialise in the initial period of implementation. In reaching this view, we had regard to: the history of fraud on the range; the overall poor awareness of the 09 range; the particular characteristics of

⁸¹ There is currently no cap (or maximum guidance in the Numbering Plan) in place for the 118 number range.

⁸² July 2012 consultation, paragraphs 4.34 to 4.80.

services on 09 which can result in long or repetitive calls; and the concern from respondents about the level of bad debt on the range.

- 9.93 For the reasons set out in more detail in Annex 22, our provisional conclusion is that it is appropriate to impose a price cap for the 09 number range at least during the initial implementation period of the unbundled tariff. With regards to the 118 range, whilst the majority of respondents agreed that a cap on the 118 SC was appropriate, BT and TNUK (two 118 SPs) strongly disagreed with this proposal. Both questioned Ofcom's assessment of the need for a cap on DQ services and raised significant concerns about the impact of such a cap on consumers' experience and innovation in the market.
- 9.94 In light of the available evidence and in particular, information provided by respondents to the consultation, we have reviewed our assessment and provisionally concluded that caps on the SC for the 118 range cannot be justified. We consider that there are a number of reasons for distinguishing 118 from our analysis on 09. First, noting the importance of marketing and brand promotion in driving consumer interest in, and recollection of 118 services, we consider that the new price publication obligations we are proposing to impose on SPs are likely to be particularly effective in securing price transparency. Second, there is no history of fraud on the range and little evidence of bill shock. Further, available evidence suggests that the level of bad debt on the range is lower than average for non-geographic calls, and for all calls. Last, the characteristics valued by consumers of 118 service are speed and convenience and so there are less incentives for long calls or repeat calling patterns.
- 9.95 We therefore accept that, on the basis of the available evidence, the case for imposing a cap on the 118 SC does not appear to be justified at the current time. However, given that the new unbundled tariff regime may change the nature of existing constraints on retail charges for 118 numbers, we will monitor the situation and will reconsider the need for regulatory intervention if appropriate. In Section 5 we set out our intention to carry out a review of the effectiveness of the unbundled tariff after implementation and pricing of 118 services is one of the particular areas we have highlighted that we will consider as part of that review.

Level of the SC cap for the 09 number range

- 9.96 In developing our proposals for the level of the SC cap in the July 2012 consultation we recognised that SPs currently offer a wide variety of services on the 09 number range and as such they would be likely to need both per call and per minute pricing structures. We considered a range of different options but our preferred approach was a SC cap of £3 per minute and £5 per call, which we considered was likely to satisfy most SPs' demands for a higher cap on 09 services and provide SPs with options for similar revenues to the majority of micropayments existing on mobile shortcodes.⁸³
- 9.97 Responses to the July 2012 consultation on this issue were split into three broad camps: consumers and mobile OCPs considered that our preferred option set the cap too high; most fixed OCPs generally agreed with the level proposed; and SPs argued that the proposed level was too low (at least if introduced at the same time as the unbundled tariff). In addition, the CAB considered we had been unclear about the level of cap being proposed and whether this included or excluded VAT.

⁸³ July 2012 consultation, paragraphs 4.81 to 4.159.

- 9.98 We have provisionally concluded in Annex 22 that the level of the SC caps should be set at £3 per minute and £5 per call (exclusive of VAT). We consider that these caps strike the right balance between the need to ensure service quality, variety and innovation while protecting consumers from fraud and bill shock and mitigating the risk of bad debt.
- 9.99 We accept that, as highlighted by the CAB's comments, there was some ambiguity in the July 2012 consultation as to whether the proposed caps of £3 per minute and £5 per call were inclusive or exclusive of VAT. The policy intention behind the proposal was for the £3 and £5 caps to be exclusive of VAT and this is therefore the level that we are proposing to set in the Numbering Plan. This means that when advertised to consumers, the maximum SC would be £3.60 and £6 respectively. Given the lack of clarity in the July 2012 consultation, however, we recognise that some stakeholder responses on this issue may not have reflected a correct understanding about the actual level of the SC caps being proposed.⁸⁴ We therefore invite any stakeholders that were not clear on the level of the caps proposed to comment specifically on this issue in response to our consultation on the modifications to the Numbering Plan (see Section 6).

Additional consumer protection measures

- 9.100 Calls to both 09 and 118 numbers are subject to regulation by PPP via its Code of Practice. This imposes a number of consumer protection measures including a mandatory registration scheme, a prior permission regime for certain services and additional controls (such as PCAs) on the most expensive services.
- 9.101 As part of the July 2012 consultation, we provisionally concluded that additional consumer protection measures, such as pre-call announcements ('PCAs') or mandatory opt-in requirements were not required at the SC cap levels we were proposing. We noted, however, that if the SC caps were set significantly higher (e.g. above £3 per minute or £5 per call), then the increased risk of consumer harm might be sufficient to justify additional consumer protection measures and that our assessment of the different measures available indicated that PCAs were likely to be the most effective measures.⁸⁵
- 9.102 We received a wide range of stakeholder comments on this issue in response to the July 2012 consultation. A number of stakeholders were supportive of additional consumer protection measures. For example, the CAB was concerned that there was already evidence of consumer harm at the current £1.53 price point for 09 numbers. However, the majority of respondents supported our view that the current measures (in particular the PPP requirements) were currently sufficient to protect consumers and no additional measures were needed under our proposed option for the level of the cap. Several respondents indicated concern that implementation of consumer protection measures would unnecessarily add to regulatory costs and might adversely affect consumer demand for services.
- 9.103 We maintain our view, as set out in the July 2012 consultation, that no additional measures are justified at the level of the caps of £5 per call and £3 per minute cap for 09 calls. In particular, we believe that the existing PPP requirements are effective at protecting consumers. We believe that this, coupled with the transparency

⁸⁴ The significant majority of respondents did not comment on whether the £3 and £5 caps included or excluded VAT. However, we note that several respondents (including EE and O2) had assumed the level of the SCs excluded VAT.

⁸⁵ July 2012 consultation, Section 5.

requirements on SPs to promote their SCs (see Section 10 below), should serve to minimise instances of bill shock and any other problems that may arise from the purchase of PRS. We will continue to work closely with PPP and will review, if appropriate, the need for additional measures to protect consumers.

- 9.104 In addition, we have considered whether it is necessary to impose any additional measures on the 118 number range. As noted above, there is no material evidence of consumer protection concerns (other than poor price awareness) in this number range currently and therefore additional consumer protection measures are not justified. However, as with the imposition of a cap for this number range, we will monitor the situation and reconsider the need for additional consumer protection measures if the risks that we have identified materialise.

Review and implementation of the 09 SC cap

- 9.105 In the July 2012 consultation we proposed that the new SC caps would be implemented at the same time as the unbundled tariff took effect (i.e. 18 months from the publication of our final statement). In terms of the process for reviewing that SC cap once implemented, we considered that a annual uplift by inflation was unlikely to be appropriate but we recognised that we might need to review the SC caps at some point in the future to assess whether the level at which they were set remains appropriate.⁸⁶
- 9.106 In response to the July 2012 consultation, a number of stakeholders (in particular SPs and related associations) argued in favour of a regular review of the level of the 09 SC cap in order to take account of inflation and to allow for innovation. Others (e.g. UKCTA) considered that such a regular review would be administratively inefficient and could cause consumer price uncertainty. In terms of the implementation timetable, a number of SPs argued strongly in favour of increasing the current £1.53 cap in the Numbering Plan (which applies to BT's retail price) as an interim measure prior to the implementation of the unbundled tariff.
- 9.107 We remain of the view that a regular review of the level of the SC cap is not appropriate, given its potential to undermine the price transparency benefits of a stable SC cap. Nevertheless, we recognise that a review of the SC cap is likely to be required in future. Given that introduction of the unbundled tariff is not due to take effect until late 2014 at the earliest, we do not propose to set out at this stage when we would expect a future review of SC caps to take place. We consider it appropriate to wait until we are able to assess how well the new tariff structure is working before undertaking such a review.
- 9.108 With respect to the argument raised by several SPs that the increases should be implemented earlier, as set out in the July 2012 consultation,⁸⁷ introduction of the unbundled tariff will provide consumers with increased levels of price transparency and awareness which would provide the right level of consumer protection for any increase in the level of the cap. This may not be the case under the current market structure and therefore we have no plans to raise the level of the caps independently of the implementation of the unbundled tariff.⁸⁸

⁸⁶ July 2012 consultation. We discussed the need for a review of the caps in paragraphs 4.114 to 4.118 and the implementation timetable was discussed in paragraphs 6.23 to 6.28.

⁸⁷ See paragraphs 6.25 to 6.28.

⁸⁸ See Section 4 where we set out our concerns about the consumer harm and market failures present in the NGCS market currently.

SC price points

- 9.109 Finally we need to consider the number of different price points for the SC. Currently SPs can select any price point they require for their service by requesting it from BT. BT has tended to accept all requests and as a result there are now more than 300 different price points for non-geographic calls. Whilst these different price points are replicated in the wholesale termination rates which are passed on to TCPs, many OCPs, particularly mobile OCPs, do not charge all of these different price points at the retail level to their customers. Instead these OCPs consolidate those wholesale prices into a much smaller range of retail prices.⁸⁹
- 9.110 Under the unbundled tariff, the OCPs will be required to bill the exact SC to their customers and then pass it through to the TCP. Therefore they will no longer be able to consolidate price points as they have done up to now. The greater number of price points, the more sophisticated (and costly) OCP billing systems will need to be. We therefore need to consider what requirements should apply to the number of different SC price points in order to minimise those costs and ensure the system is manageable. We have set out our estimate of the billing cost for OCPs in Annex 10; that estimate takes into account view on the minimum price points set out below.

Minimum number of SC price points

- 9.111 In the April 2012 consultation we proposed that it was appropriate to curtail the total number of price points we would oblige OCPs to accept. We noted that there was a general consensus within the industry that some simplification of the existing large range of wholesale price points was appropriate. However, rationalisation needs to be proportionate, i.e. there should be a minimum number of price points for which the costs were reasonable but which still enabled sufficient competition and innovation on price among TCPs and SPs. In our view, a minimum number of SC price points of between 60 and 100 appeared reasonable as it balanced the desire for future growth, competition and innovation against the potential for additional OCP billing costs.⁹⁰
- 9.112 The vast majority of respondents agreed that a minimum number of SC price points was necessary, both to reduce OCP billing costs and in the interests of simplicity for consumers. A few respondents (BT and AIME) were concerned that it could restrict SP pricing flexibility and innovation.
- 9.113 In terms of what the minimum number should be, several respondents agreed that somewhere between 60 and 100 appeared reasonable. However, there was disagreement about which end of that range the minimum requirement would sit. On the one hand some of the mobile OCPs argued that 60 should be the absolute maximum. EE and Vodafone highlighted the additional billing costs involved with a greater number of price points, in particular the ongoing operational costs of maintaining a larger number of price points. On the other hand, a number of terminating CPs and SPs indicated concerns about the impact of too low a limit on SP pricing flexibility and innovation. TNUK in particular said that DQ services needed a wider range of pricing flexibility and it questioned whether an additional 40 or 50 price points would lead to any noticeable impact on OCP billing system costs. TNUK highlighted that preventing SP pricing flexibility would mean Ofcom would not be

⁸⁹ For example, Vodafone charges its pay-monthly customers 35p a minute (with a minimum one minute call charge) for any calls to 0844 or 0871 numbers (<http://www.vodafone.co.uk/shop/pay-monthly/call-charges/index.htm>), whereas there are over 30 different wholesale charges for these ranges.

⁹⁰ April 2012 consultation, Part B, paragraphs 10.346 to 10.367, pages 153 to 156.

addressing the vertical externality issue which it had identified as one of the current market failures.

- 9.114 We have carried out further evidence gathering to understand the cost impact on OCPs with a greater number of price points (see Annex 10). Based on that information, as well as information gathered previously for the April 2012 consultation and discussions at the industry working groups, we consider there is likely to be a material difference in OCPs billing costs created by having more than 100 price points. Consequently, our view remains that imposing a minimum number of SC price points is necessary in order to minimise the impact on OCPs billing systems.
- 9.115 Having a minimum number of SC price points will reduce pricing flexibility for SPs to some extent. The evidence we have considered in this review suggests that, in practice, this should not have a materially adverse affect on competition or consumer choice, given that the extent to which the current range of prices is employed is limited.⁹¹ Moreover, there are other consequences of the unbundled tariff which should lead to greater competition and consumer choice than the status quo. Specifically, the price point which an SP selects under the current system is not the actual price charged to the consumer (except for those calling from a BT line) and the SP cannot easily or widely advertise that price and compete on the basis of it. This will change with the introduction of the unbundled tariff so that both competition and consumer choice should be improved, even though the range of SC price points is likely to be more limited than at present.
- 9.116 We have carried out a further analysis of call volumes on different existing price points (set out in more detail in Annex 21) and using that information, in combination with the information on billing costs described above, we have decided that the minimum number of price points that an OCP will be required to provide should be set at the top end of the range, i.e. 100 SC price points. We consider that 100 price points will provide sufficient variation in the system to allow SPs to differentiate their services as well as providing a range of revenue levels to meet existing and expected future service requirements. (note that we are proposing that the availability of these price points is staggered, see paragraph 9.128 below). Ofcom has a duty to promote competition where appropriate and there is a risk that selecting a lower minimum for the number of SC price points will lead to greater restriction of SP's pricing choices than is necessary. Having 100 price points rather than 60 does increase the ongoing costs for OCPs, and we have factored these higher costs into our revised impact assessment (see Annex 10). We consider that these additional costs are justified by the increase in choice to SPs of having a larger number of SC price points to choose from.
- 9.117 The following points are also important to highlight:
- i) the minimum number of 100 SC price points does not represent a total limit on what SC prices can be used. We are requiring OCPs to be able to bill a minimum of 100 SC price points and for those price points to reflect on a fair and reasonable basis the SC rates proposed by other providers, taking account of the volume and range of such proposals. It will be open to TCPs/SPs to request further SC price points but they will need to negotiate with each OCP to get that

⁹¹ Our analysis of call traffic on the existing chargebands for non-geographic calls in 2011 found that over 95% of call minutes were in the top ten chargebands for the 08 ranges, and over 90% of call minutes were in the top twenty chargebands for the 09 ranges (information gathered as part of Commercial working group discussions in July to September 2011).

additional price point open. We are not preventing OCPs from offering more price points outside of that 100 minimum;

- ii) SPs will be able to change SC price points, provided all users of the allocated number block to which that price point applies agree to that change. Annex 25 discusses a potential industry code of practice on the process for such changes;⁹² and
- iii) SC price points available within the 100 minimum will not be linked to specific number ranges. Thus, for example, a price point of '£1 per minute' could be used by all SPs for whom that is a lawful choice of price – for example, it could be used both for a 118 number and for any number within the 09 range. In relation to the SC billing requirement, the adoption of that price point by TCPs/SPs, across all ranges, would only be 1 of the 100 minimum price points OCPs will be required to offer.

9.118 We consider that in order to aid the process of setting the SC price points, having a regulatory requirement for those price points to be at least in 1p increments could be beneficial. This would ensure a basic degree of coherence in the system of price points (and one that is intuitively straightforward for consumers to understand) and would reduce scope for unnecessary use of SC price points which are only half a pence or less different from each other. We are therefore proposing to include such a requirement in our proposed modifications to General Condition 17 (see Section 6).

Approach to establishment of SC price points

9.119 We set out some provisional suggestions for particular SC price points on the different number ranges in Section 10 of the April 2012 consultation.⁹³ We said, however, that stakeholders were likely to be better placed to identify the price points for which there was substantial demand from SPs. The suggestions we provided were therefore intended to stimulate and focus discussion rather than being proposals to implement. We considered that the process for agreeing the actual price points should be led by industry, albeit with some facilitation from Ofcom if that were required.

9.120 Most respondents agreed that industry should take the lead on agreeing the specific price points. However, there was concern from some that the process for this was still unclear, as was Ofcom's potential role. A few respondents also highlighted potential competition law concerns around industry discussions of retail price points. Some respondents believed that Ofcom would ultimately have to make the final decision on the price points, in particular CWW and Three. Others considered that it would be preferable for the price points to be specified in the Numbering Plan to provide greater certainty and a method of enforcement.

9.121 We have responded to more detailed stakeholder comments in Annex 21, including the points about the Numbering Plan and competition law concerns. We have set out here in broad terms how we consider the process could work.

⁹² In the case of the 118 number range, there will be greater flexibility to switch price points, since each 118 number is allocated individually, whereas as the 08 and 09 ranges are typically allocated in blocks of 10,000 numbers. It will therefore be possible to change the SC for a 118 number without affecting other TCPs/SPs on the range.

⁹³ See paragraphs 10.368 to 10.387.

- 9.122 There is a need for a common set of SC price points available from all OCPs, to ensure that:
- TCPs are able to meet their obligation to provide access to each of their non-geographic numbers at the same SC, regardless of the OCP used to make the call; and
 - retail consumers are able to access the services on the numbers in question.
- 9.123 The commercial needs of SPs and ultimately the interests of consumers would best be met where industry, not Ofcom, comes to a view about the individual SC price points needed. Decisions by CPs that have commercial relationships with TCPs and SPs are most likely to provide the level of pricing flexibility needed by SPs and the choice that consumers want. Without these commercial relationships and the knowledge that they provide Ofcom is less likely to set an optimum set of prices to the disadvantage of consumers.
- 9.124 In terms of how a common set of price points will be achieved, in the first instance, TCPs will have to choose an SC for each non-geographic number block that they hold. In doing so, we would expect them to have regard to the current price points of those blocks, to the pricing needs of their SP customers providing services on those blocks and to the maximum price cap that will apply to the range in question. Having identified SCs they consider appropriate, they will then need to ascertain through negotiation with each OCP whether the SCs they have selected map across to price points within the OCPs' billing systems. The OCPs will be obliged to provide a minimum of 100 price points, and we are proposing that this obligation should include a requirement for those OCPs to ensure that their 100 price points reflect on a fair and reasonable basis the price points proposed by SPs, taking into account the volume and range of those proposals.
- 9.125 We expect that a core of common price points is likely to emerge naturally and relatively quickly since OCPs will have the same incentive to offer at the outset established price points which attract the most call volumes. In addition, as part of the industry working groups, a set of principles has been established and this can be used as the framework within which commercial negotiations between each TCP (representing the needs of its client SPs) and each OCP can take place.
- 9.126 In addition, we are proposing that the SC will be required to be in increments of a minimum of 1p and there will be a requirement for SCs to be within the caps which will be imposed for each of the non-geographic ranges, bar 118. We consider that by removing the scope for fractional variations in the SC and by limiting the range within which they can be set, these measures will also facilitate the emergence of a common set of SC price points.
- 9.127 We acknowledge that, outside of the price points with the highest call volumes, there may be more difficulties in securing a common approach. Nonetheless, we expect that, over the course of the implementation period, the 100 SC price points that OCPs are required to provide should ultimately coalesce to a substantial degree because of the network benefits that will accrue to both SPs and OCPs as a result.
- 9.128 Since we expect that new services will emerge with the improvements in consumer confidence that the unbundled tariff should bring, we are proposing that the implementation of SC price points should be staggered with 80 being made available when the new requirements take effect and another 20 twelve months later. We consider this will give scope for SPs to negotiate new price points, particularly at the

higher rates that will be permitted for 09 and 118 services without competing for price points with existing services.

9.129 Ofcom will need to be informed of the relevant SC price point for each number range as part of the process of applying for numbers (as well as what the SC price point will be for each existing allocated number block) and we will keep a record of these allocations through our existing Numbering Scheme published on our website.⁹⁴

Section 10, where we discuss the SC database, contains further information on this approach.

9.130 We have set out in Section 10 when we consider is appropriate for industry to have established the mapping of SC price points and this takes into account the fact that SPs will need time after being informed of their SC to decide whether to remain on their number ranges. We will continue to monitor the OCPs' development of their SC price points during the implementation period and will keep under review what action, if any Ofcom should take to facilitate this process. Our proposed modification of GC17 at Annex 14 includes a provision that enables us to direct CPs to take such steps as may be necessary to ensure that they are ready to implement the unbundled tariff when the new regime takes effect. In addition, and as noted above, our proposed modification to GC17 would also require OCPs to ensure that their 100 price points reflect on a fair and reasonable basis the price points proposed to them, taking into account the volume and range of those proposals. It would be open to parties to approach us if they consider that an OCP is in breach of this obligation. We have powers to resolve disputes relating to the rights and obligations imposed by a general condition, and to investigate compliance with general conditions on our own initiative.

Summary of approach to the SC

9.131 Therefore, we our view is that the following tariff principles should apply to the SC:

- bespoke SCs will be prohibited;
- time of day/day of the week variations on the SC will be prohibited but there are no other restrictions on the pricing structure;
- SC maxima (all ex VAT) of:
 - 5.833 pence for the 084 range;
 - 10.83 pence for the 087 range; and
 - £5 per call (fixed fee) and £3 per minute for the 09 range.
- OCPs will be required to bill a minimum of 100 SC price points, with 80 being made available upon implementation of the unbundled tariff and a further 20 twelve months after implementation.

9.132 In addition, we are proposing to introduce a requirement that the OCP's price points for the SC are set in increments of no more than 1p.

⁹⁴ <http://stakeholders.ofcom.org.uk/telecoms/numbering/telephone-no-availability/numbers-administered/>

- 9.133 We are proposing to make a number of modifications to the Numbering Plan and GC17 in order to give effect to these tariff principles. We have set out the proposed modifications in Section 6 and Annexes 14 to 15.

Assumed Handover Point and transit payments

- 9.134 In considering the design of the unbundled tariff structure, we also need to decide on the location of the dividing line between the AC and SC elements of the call and what is included within each charge. In particular the OCP will route an NGC up to a certain point, after which it is 'handed over' to the TCP. In order to ensure that the division between the AC and SC is clear, in terms of the conveyance of the call by, respectively, the OCP and TCP, we need to determine a point at which calls are assumed to be handed over (the assumed handover point or 'AHP'). This point will then reflect the dividing line between the AC and SC; the OCP will be responsible for any costs of conveying the call up to the AHP and the TCP will be responsible for the conveyance costs after the AHP.

- 9.135 We set out the decisions we are minded to take on this issue below, first in relation to the location of the AHP and second in relation to which party should be responsible for transit payments. Our proposed modification of GC17 to reflect these decisions is at Annex 14.

Location of the AHP

- 9.136 We have provisionally concluded, in line with our proposal in the April 2012 consultation⁹⁵ that a near-end handover ('NEHO') model is the appropriate approach to deciding the AHP. We consider that only the TCP is able to optimise routing of NGCs and therefore routing mechanisms which lead to the TCP receiving calls as near to the point of origination as possible are most likely to deliver efficient outcomes. Stakeholders largely supported this view in response to the April 2012 consultation. Magrathea and one confidential respondent disagreed and we have responded to their specific arguments in Annex 23.

- 9.137 Using an NEHO model means that, for BT originated calls the AHP is currently the digital local exchange ('DLE'). For calls originating on other networks it will be the originating switch or the closest point of interconnection to the origination of the call.

Responsibility for transit payments

- 9.138 Currently, for historical reasons, the payment of transit for non-geographic calls varies between OCP and TCP for different number ranges.⁹⁶ In the April 2012 consultation we proposed that the TCP be responsible for transit payments, but that the OCP should bear the costs of its interconnection circuits to the transit provider. We considered that a "TCP pays" approach to transit appeared preferable because it was more likely to encourage efficient investment and routing decisions, given that it would be in the TCP's own interests to minimise the costs of transit.⁹⁷

- 9.139 Whilst most respondents welcomed a move to standardise the approach towards transit payments across NGCs, and a majority of respondents supported the proposal for the TCP to be responsible for these charges, there was also significant

⁹⁵ April 2012 consultation response, Part B, Annex 18, pp.70-74.

⁹⁶ TCPs pay transit charges for the 080, 0845, 09 and 118 number ranges. OCPs pay transit for the 0844/3, 0871/2/3 and 0870 number ranges.

⁹⁷ April 2012 consultation, Part B, Annex 18, p.72.

opposition, particularly from CWW and one confidential respondent. CWW argued that a TCP pays regime can lead to inefficiencies in call routing that could potentially be addressed via an OCP pays regime. In addition, CWW also raised particular concerns about BT's position in the market and how this would affect competition.

9.140 We have responded to stakeholder comments in more detail in Annex 23. In summary, arguments can be made for both an 'OCP pays' and a 'TCP pays' approach. In particular, both have advantages and disadvantages in terms of the incentives for efficient call routing. However, we consider that the problems identified under each model could be overcome by commercial negotiation regarding the sharing of transit cost savings, and we see no reason to believe that commercial negotiation would be more successful depending on which of the two parties bears the obligation. On balance, we have concluded that a TCP pays approach is more appropriate because it is more consistent with the NEHO approach to the AHP.

Part B - Section 10

Implementation of the Unbundled Tariff

Introduction

- 10.1 Introducing the unbundled tariff will require action to be taken across industry, and in conjunction with other stakeholders, including consumers and called organisations. Equally, it is vital to the interests of consumers that the transition be managed in an effective and coherent manner.
- 10.2 In this Section we set out our provisional decision on how the unbundled tariff should be implemented as well as our views on the appropriate approach to various implementation issues which are not addressed directly by the legal obligations we are proposing to impose. The areas covered include price publication requirements, billing and system changes, exemptions to the unbundled tariff and timing of implementation.
- 10.3 Annex 24 contains a summary of the responses we received to the April 2012 consultation on the price publication requirements and Annex 25 sets out the stakeholder comments on all other implementation issues. These Annexes also present our response to the points raised.
- 10.4 Our overall approach to the implementation of both the unbundled tariff and the 080/116 ranges is set out in Section 5. This includes a timeline of various actions that will need to be undertaken during the implementation period, and our outline of Ofcom's communications strategy and the industry-led communications activities that we consider will be needed.

Price publication requirements

- 10.5 The effectiveness of the unbundled tariff will rely on consumer understanding of the new charging structure. Therefore it is important that clear information is made available to consumers about NGC charges; this will help develop consumers' confidence in making calls and promote competition on charges.
- 10.6 We therefore consider that a number of price publication requirements are necessary to ensure that charges are clearly communicated to consumers. In the April 2012 consultation we set out a number of proposals for publication requirements, in relation to the following areas:
- information on customer bills;
 - price publication obligations on OCPs; and
 - price publication obligations on SPs.
- 10.7 We have set out the decisions we are minded to take on each of these in turn below.

Information on customer bills

- 10.8 In the December 2010 consultation we originally proposed that the AC and SC elements of each call should be presented separately on customers' bills. However, it

became clear that this would generate significant costs, with limited benefits given that a significant number of consumers do not necessarily receive a bill.

- 10.9 In the April 2012 consultation we therefore recognised it would be disproportionate to require OCPs to present disaggregated charges on a per call basis. We said instead that our primary requirement was that customers should be able to understand that the price for a NGC was made up of two separate elements, the AC and the SC. We noted that General Condition 12 ('GC12') already included a requirement for CPs to ensure that itemised bills provided a sufficient level of detail to allow subscribers to verify and control their call charges, as well as monitoring their usage. We considered that the most proportionate and justifiable approach was to give OCPs flexibility to decide the best way to present NGC charges to their customers on their bills, provided they met the requirements in GC12. We said that, at a minimum, we would require that the AC charged to the customer was set out on their bill, and it was open to CPs to present a greater level of detail if they wished to do so.⁹⁸
- 10.10 In response to the April 2012 consultation some stakeholders, particularly some SPs and the CAB, argued that the AC and SC elements of the call charge should be presented separately on consumers' bills. They considered that this was necessary to ensure consumer understanding of the unbundled tariff structure and to enable competition to develop on the charges. The majority of stakeholders, however, supported our revised position that separation of individual ACs and SCs on consumer bills was not necessary. Several respondents noted that disaggregation of those charges would have led to significant billing costs and they considered that allowing OCPs to choose the most appropriate way of presenting the charges to consumers, provided that the AC was made clear, was a more proportionate and flexible approach. A couple of respondents (SSE and Virgin Media) argued that even the inclusion of the AC on customer bills should not be obligatory, noting it would increase costs and suggesting it would not be beneficial to consumers.
- 10.11 Our discussions with industry as part of the working groups in 2011, as well as the individual cost estimates submitted by OCPs (discussed in Annex 19 of the April 2012 consultation), provided evidence that an approach whereby an OCP is required to disaggregate the AC and SC on customer bills could give rise to significant costs. In addition, as discussed in paragraphs 12.29 to 12.31 of the April 2012 consultation, not all consumers receive a bill (e.g. 48% of consumers are on pre-pay tariffs⁹⁹) and even those that do, do not necessarily check it in detail. For these reasons, whilst we acknowledge that presenting a separate AC and SC on each customer bill would be the most transparent approach, we consider that requiring this of OCPs would not be proportionate, given the costs involved (and that not all consumers would benefit).
- 10.12 Our objective is to ensure that when a customer looks at their bill, they are able to understand that the price they have been charged for an NGC is made up of two separate elements, the AC charged by their OCP and the SC charged by the TCP/SP. This should enable the customer to make a broadly accurate calculation, if they wish, of the different payments made to each party. In order to achieve this, we therefore consider that, as a minimum, it is necessary for the AC charged to the customer to be set out on the customer's bill. We have taken into account the costs involved for OCPs in making amendments to their billing systems in order to achieve

⁹⁸ April 2012 Consultation, Part B, Section 12, paragraphs 12.26 to 12.36.

⁹⁹ 2011 Consumer Experience Report, Figure 20, p.21,
http://stakeholders.ofcom.org.uk/binaries/research/consumer-experience/tce-11/research_report_of511a.pdf

this requirement in Annex 10. We also recognise, as noted in the paragraph above, that not all consumers receive a bill and therefore not all will benefit.

- 10.13 The requirement to include the AC on customer bills is a minimum requirement and it will be open to OCPs to present a greater level of detail on customers' bills about how the prices to these non-geographic number ranges are calculated, if they wish to do so.

Publication obligations on OCPs

- 10.14 OCPs are already subject to a number of transparency requirements under the General Conditions in relation to NGCs (in addition to those relating to itemised billing in GC12 as discussed above), in particular:

- **General Condition 10:** this requires CPs to publish clear and up to date information on their applicable prices and tariffs, including details of their standard tariffs with regard to all types of usage charges;
- **General Condition 14:** CPs are required to establish and comply with a Code of Practice for the publication of prices of calls to NGCs. In particular these require CPs to:
 - publish usage charges and information about the tariffs that apply on their network for calls to any PRS number range;
 - publish NTS and 0870 charges and give them equal prominence in terms of location and format, given to charges for geographic calls, calls to mobiles and call packages, including bundles;
 - publish in advertising and promotional material which refers to call pricing maximum prices applying to NTS and 0870 calls and a clear reference as to where on websites and published prices list the complete set of charges can be found; and
 - when a new customer signs up for a service, provide maximum prices applying to NTS and 0870 calls and a clear reference as to where on websites and published price lists the complete set of NGC charges can be found.
- **General Conditions 23 and 24:** mobile and fixed CPs must, before entering into or amending a contract with a customer, use reasonable endeavours to ensure the customer is provided with a range of clear comprehensible and accurate information that is provided in a durable form. Information that must be provided includes a description of the service, key charges and payment terms.

- 10.15 These conditions will need to be amended to reflect the structure of the unbundled tariff. That leaves open the question: are further publication rules required to provide clear and transparent information for consumers about the unbundled tariff?

- 10.16 In the April 2012 consultation we proposed that OCPs would be required to ensure that the AC for a given tariff package was clear and available. We noted that, as well as appearing on customers' bills, we would expect the AC to be provided on enquiry, to be made clear at the point of sale and to be published in OCPs websites and price lists as well as its advertising and promotional materials. We stated that we would review the transparency obligations in the existing General Conditions to determine whether they were sufficient to achieve our objective of making the AC clear and

available. We considered that the AC should be treated as one of the ‘key charges’ (as described in GC23 and GC24), and it would be identified specifically as a price that must be brought to the attention of customers.¹⁰⁰

- 10.17 Most respondents to the April 2012 consultation agreed that the existing price publication obligations, with some modifications, were sufficient to ensure that consumers are made aware of their ACs. A few respondents (including EE and SSE) suggested that Ofcom should use this opportunity to review its ‘overly prescriptive’ approach to pricing regulations and should instead focus on the outcomes it wanted to achieve. A couple of respondents were concerned, however, that the existing regulations did not go far enough to ensure that ACs would be made sufficiently clear to consumers both at the point of sale and on an ongoing basis. There were also concerns raised about the efficacy of any regulations, given previous experience suggesting poor compliance with transparency regulations.
- 10.18 For the unbundled tariff structure to be understood by consumers - and in particular that consumers develop an awareness of their AC - that AC has to be made transparent to consumers by OCPs. This transparency can apply in general (as part of their pricing information, as well as their marketing and promotional material), and also when a customer is signing up to a new contract. The publication of the AC is particularly important for encouraging competition on the AC, as highlighted in some of the stakeholder comments. Given that the existing requirements relating to NGCs in the General Conditions (outlined in paragraph 10.14 above) already oblige CPs to publish charges in a form which would meet our objectives, we consider that a new, specific General Condition is not necessary. Instead we are proposing amendments to the existing requirements in the General Conditions (specifically GCs 12, 14, 23 and 24) to ensure that the AC is sufficiently publicised and made available to consumers. Section 6 and Annex 14 sets out our proposed amendments to the relevant conditions.
- 10.19 The fact that the AC will be a single pence per minute charge for all unbundled non-geographic numbers will make compliance with these requirements more straightforward for OCPs, because it will reduce the amount of information OCPs have to present to consumers. Rather than a wide range of different prices for individual non-geographic numbers, OCPs only have to provide customers with the AC for the relevant tariff package. OCPs will not be required to publish SCs for particular numbers under the requirements outlined above, but they will still have access to that information for billing purposes and therefore they may wish to provide it to their customers on request (or through a web based application or similar). In addition, we expect OCPs to provide general information on NGC pricing such as the maximum SCs applying to each number range in fulfilling their obligations under GC14.

Publication obligations on SPs

A requirement on SPs to advertise their SCs

- 10.20 An important feature of the unbundled tariff is that the SC is clear and readily accessible to consumers, at the point of call if possible. In our assessment in Sections 8 and 9 we have referred several times to the importance of the SC being clear to consumers in promotional material and advertising by the SP. This is supported by, for example, evidence from the 2011 Experimental research which found that accurate information at the point of call significantly improved participants’

¹⁰⁰ April 2012 consultation, Part B, Section 12, paragraphs 12.129 to 12.132.

decision making.¹⁰¹ In particular the experiment shows that where participants were provided with the SC at the point of call the unbundled model performed better than the status quo.¹⁰² We therefore consider that publication of the SC by the SP is a crucial element in the success of the unbundled tariff.

- 10.21 For these reasons, taking account of our assessment of the unbundled tariff and its design, we have decided to require SPs to publish their SC wherever they promote their non-geographic number. We will impose a condition on SPs to this effect under section 59 of the Act. There will be a corresponding obligation imposed under GC14 on CPs who are using non-geographic numbers to provide a service, e.g. for their customer service helplines.
- 10.22 In order to ensure the effectiveness of the new condition on SPs, we are also proposing to implement a condition on TCPs which will require them to secure, through their contracts with SPs, that their SP customers comply with the requirement to publish their SCs in their advertising and promotional material. We expect TCPs will be communicating with their SP customers as a result of the unbundled tariff changes in any case and therefore informing of SPs of their obligations in this respect can form part of that communication activity. See section 6 where we have set out the proposed new condition on non-providers, as well as modifications to GC14 and 17 in order to implement the requirements on CPs.
- 10.23 However, Ofcom's powers to enforce the numbering condition we are proposing to make under section 59 are limited.¹⁰³ We therefore consider the question of the appropriate enforcement mechanism in more detail below.

Enforcement of the requirement for SPs to advertise their SCs

- 10.24 There are already a number of price transparency obligations applying to SPs when they advertise their services on non-geographic numbers, in particular:
- 0871/2/3, 09 and 118 numbers are covered by the PhonepayPlus ('PPP') Code of Practice which requires that the cost must be included before any purchase is made and must be prominent, clearly legible, visible and proximate to the premium rate telephone number;¹⁰⁴ and
 - the Committee of Advertising Practice ('CAP') (which provides advice on ensuring compliance with the UK's Advertising Codes administered by the Advertising Standards Authority ('ASA')) recommends that SPs advertising services using 0844/3 numbers should state the cost of calling these numbers in their advertisements (where they are charged at a higher rate than standard calls on BT's Unlimited Weekend Plan).¹⁰⁵ Currently CAP considers that advertising referring to 0845 and 0870 numbers do not need to include pricing information,

¹⁰¹ 2011 Experimental research, page vii, point 1.

¹⁰² 2011 Experimental research, page vii, point 1 and Table 1.

¹⁰³ Conditions we set under section 59 of the Act are only enforceable in civil proceedings by OFCOM (under section 59(6)).

¹⁰⁴ PPP Code of Practice, 2.2.5. <http://code.phonepayplus.org.uk/pdf/PhonepayPlusCOP2011.pdf>. In addition these ranges are also covered by the CAP and BCAP ('broadcast committee of Advertising practice') Advertising Codes administered by the ASA. CAP refers advertisers to the PPP Code of Practice and the ASA usually refers complaints about these services to PPP in the first instance.

¹⁰⁵ <http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-0844-and-0871-numbers.aspx>

because the cost of calling is lower than the cost of a standard call on BT's Unlimited Weekend Plan.¹⁰⁶

- 10.25 These requirements will need to be updated to reflect the new structure of the unbundled tariff, in particular the requirement as set out above for all SPs (regardless of the non-geographic number range they are using) to set out the SC applying to a particular number in their advertising and promotional material. We have set out in Section 5 the timetable likely to be involved with any required updates to PPP's Guidance/Code of Practice to reflect these new requirements.
- 10.26 In the April 2012 consultation whilst we noted that PPP could enforce the requirement for SCs to be advertised on the 0871/2/3, 09 and 118 ranges, we considered that there were a number of different options available for the 084 number ranges. In particular:
- Option 1: extension of PPP remit to include all revenue-sharing ranges; or
 - Option 2: regulatory condition on SPs (enforced through an industry Code of Practice and / or the ASA).
- 10.27 We noted that there was a significant level of concern from the industry about the extension of PPP's remit and we recognised that this option could impose an additional regulatory burden on a large number of SPs. We considered that the alternative option (option 2) would be less burdensome and costly to SPs. Our primary concern regarding this option focused on the effectiveness of the enforcement regime albeit we noted that the ASA could be involved with enforcement as well as potentially the industry itself developing its own Code of Practice to ensure compliance. Our provisional view was therefore that, in line with our principle of bias against intervention, it would be preferable to pursue Option 2 rather than widening PPP's remit.¹⁰⁷
- 10.28 There was broad support for the development of an industry code of practice and/or enforcement by the ASA. In contrast there was strong opposition to the option of extending PPP regulation, and many respondents argued that 0871/2/3 ranges could be brought out of PPP regulation under any new scheme. BT and CWW noted that work had already begun on the development of an industry code of practice. The ASA itself indicated that it would be able to administer any requirement for SPs to advertise their SCs as part of its existing Code rules. Some respondents raised concerns, however, about how flexible the requirement would be and whether it was going to be practical to enforce.
- 10.29 We have responded to specific stakeholder comments in detail in Annex 24. It is clear from the comments received that there remains a significant level of concern about the proportionality of the proposal to extend PPP's remit to include the 084. The ASA confirmed that it will be able to administer the requirement for the SP to advertise their SCs on these number ranges under the existing Advertising Codes. The ASA is a well-established and recognised system and it has a number of sanctions available for advertisers that breach the advertising Codes. In addition, it has 'backstop' regulators (the Office of Fair Trading ('OFT') for non-broadcast advertising and Ofcom for broadcast advertising) to which it can refer advertisers that

¹⁰⁶ <http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-0845-numbers.aspx> and <http://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Chargeable-0870-numbers.aspx>

¹⁰⁷ April 2012 consultation, Part B, Section 12, paragraphs 12.146 to 12.175.

continue to breach requirements of the advertising Codes.¹⁰⁸ We therefore consider that the ASA taking responsibility for ensuring compliance with the requirement for SPs to advertise their SCs is a reasonable and proportionate approach.

10.30 We note in Annex 24 that some respondents have argued for the 0871/2/3 ranges to be removed from PPP regulation.¹⁰⁹ We consider that such an approach would not be appropriate while significant regulatory change in this area is in progress, particularly given that these number ranges typically generate higher revenue levels and therefore have greater potential for scams. Nevertheless, we recognise that the implementation of the unbundled tariff may address some of the concerns which led to the extension of PPP regulation to those ranges in the first place. We will wait until after implementation to see how the system operates in practice before we can assess whether there is no longer a need for PPP oversight. As noted in Section 5 we will be reviewing implementation of the unbundled tariff and this is a further issue we can consider as part of that review.

Wholesale issues

10.31 We set out a number of issues relating to how the unbundled tariff would operate in terms of the wholesale relationships between OCPs, TCPs and SPs in Section 12 of the April 2012 consultation. The particular issues we covered were:

- service charge database;
- establishment of number ranges and variations in tariffs; and
- access to numbers;

10.32 We address each in turn below. We also address the issue of call rounding, which was raised in stakeholder comments in response to the April 2012 consultation.

Service charge database

10.33 The unbundled tariff will require OCPs to bill their retail customers the exact SC that applies to a particular number range (unless the number in question is included within a bundle of inclusive minutes for the purposes of charging the SC). This means that they will need to have accurate and up-to-date information from TCPs about the relevant SC for each number range block. As part of the industry working group discussions which were held in 2011, industry sought assurances from Ofcom that there would be some central record of all SCs (or 'database'). This idea received some support because it was noted that this would provide a reference point for confirming and validating SCs.¹¹⁰

¹⁰⁸ The UK advertising regulatory system is a mixture of self-regulation (for non-broadcast advertising) and co-regulation (for broadcast advertising). Where an advertiser does not comply with the ASA's adjudications, the ASA can refer them to the OFT (for non-broadcast advertising) or to Ofcom (for broadcast advertising) for further regulatory action. In this way, the OFT and Ofcom act as 'back-stop regulators' to the ASA. See <http://www.asa.org.uk/Industry-advertisers/Sanctions.aspx> for further information on the ASA's available sanctions.

¹⁰⁹ Note that our proposed modification of the PRS Condition at Annex 16 will also bring 0870 within the scope of PPP regulation – see paragraph 6.60 of Section 6 for more detail.

¹¹⁰ See Annex 14 of the April 2012 consultation which contains a summary of the industry working groups discussions, in particular pp. 197-198. In addition a more recent working group discussion included the issue of the SC database (on 25 July 2012). The notes of that meeting are available here: http://stakeholders.ofcom.org.uk/binaries/telecoms/groups/nts/NGCS_working_25july2012.pdf

- 10.34 In the April 2012 consultation we therefore discussed whether a central SC database linking number ranges and SCs would be desirable and we noted there were two possible approaches to such a database, public sector provision (either by Ofcom's Numbering team, or delegation to another party, e.g. PhonepayPlus); or provision on a commercial basis, i.e. private sector provision.¹¹¹
- 10.35 We received a number of comments from stakeholders on this issue. We have set out these comments, and our response, in more detail in Annex 25. The vast majority of respondents (including most CPs) agreed that a central SC database would have a number of benefits in ensuring the smooth operation of the unbundled tariff, in particular in providing a 'master list' of all SCs which OCPs could reference. Some respondents suggested that a database was in fact crucial to the implementation of the unbundled tariff. Most of these respondents were also in favour of the database being provided by Ofcom. They noted that we already provided much of the functionality through the publications we make as part of our numbering duties and that it would only require some minor amendments to these to establish a database of SCs. Several respondents were opposed to any commercial provision of the database, arguing that the provisioning and establishment would be more complex and costly. A couple of respondents questioned, however, whether a database was really necessary, noting that the information it would hold already existed in a number of forms.
- 10.36 As noted in some of the stakeholder comments, we currently publish information in relation to the non-geographic number blocks that we allocate in performance of our record keeping duty under s.56(3) of the Act in relation to telephone number allocations.¹¹² The information consists of a series of downloadable Excel spreadsheets, which are updated weekly. For most of the non-geographic number ranges, the data published also currently includes the BT tariff which is set against the allocated number block. Given this on-going duty and the relatively low cost of replacing the existing BT tariff information with the SC, we have decided to provide the relevant SC in our published information on each non-geographic number block we allocate. This will provide industry with a single point of reference for applicable SCs.
- 10.37 Ofcom, however, can take no responsibility for the accuracy of the SC data that it receives and publishes. Number range holders and TCPs will therefore need to ensure that we are provided for the purposes of publication with correct and comprehensive information and kept up to date with any changes to the SC associated with a given number or number block. We would also expect TCPs to verify that SC data they provide (or, in the case of a ported number, relating to a non-geographic number for which they are the range holder) is accurately recorded in Ofcom's published records. CPs which refer to the Ofcom data will need to consider whether there are additional measures they should take in order to verify the accuracy of any information they are proposing to use. A number range holder will need to, in line with current practice, inform Ofcom in advance of any changes to its SC, so that we can update our records accordingly.
- 10.38 We are not currently proposing additional functionality with the information we publish (for example a search facility to enable consumers to look up the SC for an individual non-geographic number). There are no obstacles to others using that information to offer value-added services of this nature, should there be demand for them.

¹¹¹ April 2012 consultation, Part B, Section 12 paragraphs 12.42 to 12.63.

¹¹² <http://stakeholders.ofcom.org.uk/telecoms/numbering/telephone-no-availability/numbers-administered/>

Establishing number ranges and tariff notification

- 10.39 We provided a summary of the current process for establishing number ranges, and their tariff points, in the April 2012 consultation.¹¹³ We noted that Ofcom did not regulate this process directly, beyond the requirements of General Condition 20 ('GC20'), which required all CPs to ensure, where technically and economically feasible, that end-users are able to access and use non-geographic numbers.
- 10.40 We said that based on our discussions with industry, it was clear that there was support for a reform of the current system, particularly in the context of the overall reform of the NGC regime. We also highlighted a current industry initiative to develop a voluntary code of practice with respect to the times and process for building number ranges.¹¹⁴ We considered that these were issues which it was preferable for the industry to sort out itself, although we remained willing to participate in facilitating such discussions and providing a central record of any agreements.¹¹⁵
- 10.41 In response to the April 2012 consultation BT and a few other respondents argued that Ofcom should implement mandatory regulatory requirements for number range building. BT suggested that any new rules could tie into the SC database and the associated price point management processes. Several other respondents disagreed, however, that there was a need for regulatory intervention or wider reform. These respondents noted that the industry code of practice initiative was seeking to address some of the issues raised, although one confidential respondent suggested that Ofcom needed to articulate what it considered to be appropriate timescales for number range building.
- 10.42 Several respondents noted that the implementation of the unbundled tariff would require clear rules about how changes to tariffs were notified to OCPs and suggested that Ofcom might need to be involved in establishing those requirements, particularly if there was any industry disagreement. Some respondents suggested that the industry code of practice could provide a basis for the requirements on tariff notifications.
- 10.43 The recent industry initiative on a code of practice for the building of new number ranges shows the willingness and ability of the industry to establish systems without the need for direct regulatory intervention. We therefore do not consider that any further regulatory intervention is required at this time. However, should new processes not emerge or there is evidence that this is leading to poor consumer outcomes or undermining reasonable expectation of access in terms of GC20 then we may need to consider more direct regulatory involvement.

Access to numbers

- 10.44 Consumers expect to be able to call telephone numbers which are in use irrespective of the network to which the called party is connected. We noted in the April 2012 consultation that some CPs had experienced problems with other CPs refusing to open number ranges on their networks. We highlighted that to date, informal action by Ofcom had resolved such complaints. However, we said that, in the context of the NGCS review, we were concerned about the impact of such instances on consumer's ability to access non-geographic numbers.

¹¹³ See paragraphs 12.42 to 12.47.

¹¹⁴ This Code was developed through the NGCS Focus group,

<http://stakeholders.ofcom.org.uk/telecoms/groups/nts-focus-group/notes-of-meetings/>

¹¹⁵ April 2012 Consultation, Part B, Section 12, paragraphs 12.64 to 12.71.

- 10.45 We noted that GC20 required CPs to ensure end-users were able to access non-geographic numbers (in the absence of a justification on technical or economic feasibility grounds) but that in other Member States there were more prescriptive regulations to secure that outcome.
- 10.46 Our preliminary view was that similar regulation in the UK was not required at the current time, taking into account the commercial incentive of CPs to provide end-to-end connectivity to their customers and the requirements of GC20. We said, however, that we would monitor how well market developments matched that hypothesis, and should more evidence emerge that CPs were hindering consumers' access to non-geographic numbers, further intervention might become necessary.¹¹⁶
- 10.47 The majority of respondents on this issue argued that there was no need for additional regulatory intervention (including the mobile OCPs, TalkTalk, Verizon and Virgin Media). These respondents considered that there were already sufficient commercial incentives for CPs to open up number ranges and that the industry code of practice initiative would help to address some of the existing concerns. EE argued Ofcom could not use GC20 as a 'back-door' means of imposing an end to end connectivity requirement and that any such requirement would require Ofcom to demonstrate that all the necessary legal criteria had been met. In contrast, BT, SSE and TNUK considered that further regulatory intervention was required in this area. BT was concerned that under the unbundled tariff some OCPs might start charging for access to their networks and therefore accessibility rules had to be compulsory on all CPs, not just BT. TNUK, however, said that the problem was one of enforcement rather than lack of regulation and Ofcom should set the bounds of 'economic and technical feasibility' for opening access to numbers.
- 10.48 Having considered stakeholder comments (see Annex 25 where we respond to these comments in more detail), we consider that no additional regulatory measures are required at the current time. CPs must enable end users to access and use non-geographic number ranges which they adopt unless the exemptions specified in GC20 apply. We expect CPs to be incentivised to open up new non-geographic numbers in order to provide such access and agree that the new code of practice developed by industry should facilitate this. In the event that material difficulties of the type identified by BT emerge, we would examine the case for further intervention, whether through the exercise of our dispute resolution or competition powers or the imposition of ex ante conditions.

Rounding of calls

- 10.49 In response to the April 2012 consultation, BT raised a query about how calls would be rounded up, i.e. whether they would be rounded up to the nearest second or penny for example. It said that clear rules were needed to ensure that the consumer was charge the correct price and the SP was passed the correct level of revenue. BT suggested a number of different options which we have set out in more detail (and responded to) in Annex 25.
- 10.50 In relation to the AC, we consider that the rounding of the AC element of the call should be largely left to OCPs commercial discretion, so long as it is made transparent to consumers and is in accordance with the requirements of General

¹¹⁶ April 2012 consultation, Part B, Section 12, paragraphs 12.72 to 12.75.

Condition 11 on metering and billing.¹¹⁷ We have (as discussed in Section 9) specifically included an allowance for OCPs to round up the AC to the first minute if required (i.e. a one minute minimum call charge), in order to enable OCPs to recover any call set-up costs that might be involved, particularly with very short duration calls. However, in relation to how the AC is rounded up for the remainder of the call (i.e. after the first minute), we consider that there would be benefits to consumer price awareness from a consistent approach to the rounding of all call types (i.e. geographic, mobile, and non-geographic calls) by individual OCPs. If different rounding methodologies were applied, there could be risk of consumer confusion – particularly if OCPs were to, for example, round up geographic calls to the nearest second but round up non-geographic calls to the nearest minute. We understand that some OCPs already apply the same rounding methodology to all call types and that this approach is therefore likely to involve the least costs for them in making changes to their billing systems. We have therefore proposed in our modifications to GC17 that OCPs should round up the AC after the first minute of a call in accordance with the rounding methodology they apply to other call types.¹¹⁸

- 10.51 In terms of the SC element, we agree with BT that it is important that it is billed precisely, both in terms of the amount of revenue which is passed to the TCP/SP and what the customer expects to be billed. We consider that the SC payable to the TCP should always be the full pass through of the amount advertised to the caller, as applied to the call in question. The payment made by the OCP to the TCP therefore should reflect the full amount charged to the customer on their bill and the OCP should neither be disadvantaged nor able to make additional profit from the SC.
- 10.52 We gathered further information from CPs about this particular issue.¹¹⁹ On the basis of that information, it was clear that an approach whereby the SC (set at, or including a ppm rate) is always billed on a per second basis and rounded up to the nearest second carries the least impact in terms of additional billing costs and risk of disputes. This approach will also assist with the communication of the SC as the charge will be treated consistently by all CPs for all number ranges and the message to consumers will be clear and unambiguous. Where an SP wants to be able to round its calls up to the nearest minute, it will have the option of different charging structures of the SC as an alternative, for example a pence per call amount charged for the first minute, followed by a pence minute amount thereafter. Accordingly, our proposed modification of GC17 at Section 6 requires the OCP, in calculating the SC element of the retail price for a call (which is the amount passed to the TCP), to round up the length of the call to the nearest second.

Exceptions to the unbundled tariff

- 10.53 In the April 2012 consultation we discussed a number of specific types of calls where it might be appropriate to modify, or exempt entirely our proposals for the structure of the unbundled tariff. In particular these related to:

- International calls;

¹¹⁷ General Condition 11 requires CPs to ensure their bills to consumers are accurate (<http://stakeholders.ofcom.org.uk/binaries/telecoms/ga/general-conditions.pdf>) and in compliance with the Metering and Billing Direction (<http://stakeholders.ofcom.org.uk/telecoms/policy/metering-billing/>)

¹¹⁸ OCPs are already required to make that rounding methodology transparent to consumers as part of the Metering and Billing Direction.

¹¹⁹ We received information from nine CPs following a request sent by email on 13 September 2012. [3<].

- calls made from payphones; and
- business calls.

10.54 We have set out our decision on each of these in turn below.

International calls¹²⁰

- 10.55 In the April 2012 consultation we recognised that there were additional costs incurred by a domestic OCP when it is originating a non-geographic call for a caller overseas and we therefore proposed that the OCP should be able to set a different AC for originating non-geographic calls where the caller is outside of the UK (and which might vary country by country). We noted however that our other proposed design features of the AC (i.e. a single AC for the relevant non-geographic number ranges, no time of day variation and a ppm charging structure) should continue to apply. We said that the SC element of the NGC should be the same, regardless of the location of the caller.¹²¹
- 10.56 In terms of the SC, most respondents to the April 2012 consultation agreed that it should be the same for internationally originated calls as for domestic calls. Virgin Media, for example, noted that the service provided did not change and therefore the charge should not change. BT and Magrathea disagreed that the SC should be the same and argued instead that these calls should be out of scope of the review. BT in particular was concerned about the potential for fraud. In terms of the treatment of the AC element, there were more mixed views. Whilst several respondents agreed that OCPs should be allowed to levy a separate roaming AC, they disagreed that the same restrictions on the structure of that AC (e.g. ppm only) should apply. Three and Vodafone also highlighted that these calls were governed by EU Roaming Regulation which could conflict with some of Ofcom's proposals on the structure of the AC. EE considered that there was not a consumer protection basis for applying the AC structure to these calls and said it would create a disproportionate commercial risk to OCPs. In fact EE and O2 questioned whether it was proportionate to apply the unbundled tariff to these calls at all, especially given that applying it to calls originated outside of the EU might be unduly complex and could create additional costs.
- 10.57 We have reconsidered our position on this issue in the light of stakeholder comments. We consider there is merit to the arguments made by EE and O2 about the proportionality of such a requirement, given that internationally originated calls to non-geographic numbers have very low call volumes. This means that the benefits to consumers are likely to be low and they may not justify the additional costs that might be associated with making amendments to billing systems to apply to internationally originated calls as well as domestic calls. We are excluding these calls from the tariff principles required under the unbundled tariff and we have set out the proposed modifications to GC17 which detail this exclusion in Section 6. Although we are not imposing a direct requirement on these type of calls, our view remains, in line with the majority of stakeholder comments, that the SC element of the price should, where possible and appropriate, remain the same, regardless of the location of the caller, given that the service being provided is the same.

¹²⁰ We have defined what we mean by 'international calls' in Annex 25, see paragraph A25.92.

¹²¹ April 2012 Consultation, Section 12, paragraphs 12.186 to 12.190.

Payphones

- 10.58 In the April 2012 consultation we noted that there were technical difficulties in implementing the unbundled tariff structure on payphones. Our preliminary view was that we should adopt a proposal put forward by BT, which was that a minimum fee could be applied (linked to coinage denomination) and that numbers with fixed ppc SCs could be blocked, provided that clear consumer information was presented with the payphone.¹²²
- 10.59 In its response to the April 2012 consultation BT reiterated the technical limitations it faced in making amendments to payphones and that any changes were likely to create significant costs. On the other hand, some respondents argued that given Ofcom was not proposing a cap on the AC, payphone providers could charge an amount which covered their costs (which they noted should be up to 18ppm based on the current Payphone Access Charge for Freephone calls), they therefore considered that payphones could be subject to the same regulation as other calls. Some other respondents also noted that if the unbundled tariff changes were not reflected on payphones there was a risk that it would disproportionately affect vulnerable consumers.
- 10.60 We are mindful that payphones are sometimes relied on by vulnerable consumers, who could therefore end up paying higher charges. However, it is clear that there are significant costs involved with making changes to the tariff structures of payphones. On balance, we consider that the level of costs involved with making technical changes to payphones mean that it would not be proportionate to require the implementation of the unbundled tariff principles on calls from payphones. As regards payphone users, there is a requirement on payphone providers to specify the minimum call charge for connecting a call in the payphone itself and therefore consumers will at least be informed of the charge (or the equivalent AC at least) before making a call.¹²³ We also encourage payphone providers to adopt a similar charging structure for those NGCs that are unbundled where possible, in order to ensure that consumers experience a broadly consistent price structure (even if pricing is higher). For example we would expect the SC for a 084 number to be as similar to the allocated SC for that number as possible (within the restrictions on the number of price points available from payphones). Finally, we also highlight in this context that 080 calls will continue to be accessible and free-to-call from payphones. Therefore, SPs which wish to make their services available to that group of vulnerable consumers dependent on payphone provision, will have the option of doing so on a range that is available to them at no charge.
- 10.61 We have set out the exclusion from the unbundled tariff obligations in our proposed modification to General Condition 17 (see Section 6).

Business customers

- 10.62 Finally we consider whether the unbundled tariff structure, and in particular the tariff principles and transparency obligations we have set out above and in the previous section should also apply to business consumers.
- 10.63 In the April 2012 consultation we said we were open to considering whether exemptions to some of the constraints on the AC and SC should be allowed for business to business telephone contracts, given the concerns raised by some

¹²² April 2012 consultation, Part B, Section 12, paragraphs 12.191 to 12.193.

¹²³ General condition 6.2(a)

stakeholders on this issue. We noted that we needed to ensure that any exemptions were not allowed to affect the effectiveness of the proposed regulation in protecting consumers, and we would therefore need to determine the nature/size of companies to which any exemption would apply.¹²⁴

- 10.64 Some stakeholders considered that a specific exemption for business to business contracts was not necessary (BT and CWW), whereas others were concerned that such an exemption could cause confusion to consumers (Three, Action4). However, a number of other respondents argued that an exemption for these contracts was necessary, in particular in terms of the structure of the AC and the transparency requirements surrounding it, because it could inhibit innovation and competition and these business did not need ‘protecting’ in the same way as consumers. EE in particular argued that it would not be legally justifiable to apply the proposed changes to business contracts, because it would not be for the purpose of ‘consumer protection’.
- 10.65 The evidence we have set out in Annex 8 of the consumer harm and the failures in the non-geographic calls market essentially relates to residential and domestic consumers. Our power to impose tariff principles in relation to the provision of an electronic communications service can only be exercised if it is for the purpose of protecting domestic consumers. We have therefore confined the remedy to these customers, as is made clear in our proposed modification to GC17.
- 10.66 Nevertheless, due to the costs involved in changing billing systems to accommodate the unbundled tariff structure it may well be more efficient for CPs will implement the same structure, at least at the wholesale level, across all calls. For those CPs that are concerned about the potential confusion of having different calling structures for businesses, we note that there is nothing to prevent them adopting the same structure for their business customers and, indeed, there may be cost savings for them from doing so.

Other implementation issues

- 10.67 Stakeholders also made a number of comments about other implementation issues in response to the April 2012 consultation. These included the gap between the expiration of the NTS Call Origination Condition on BT and the implementation of the unbundled tariff, as well as the application of General Condition 9. We have responded to these comments in Annex 25.

Timing of implementation

- 10.68 We now turn to the question of what period of time is needed in order to provide sufficient time to stakeholders to undertake all the actions necessary to implement the unbundled tariff structure.
- 10.69 In the April 2012 consultation we proposed an implementation period of 18 months. We considered that the contractual renegotiations and communications between wholesale and retail providers should take no longer than 18 months and we noted that 18 months would enable some OCPs to undertake any changes to their billing

¹²⁴ April 2012 consultation, Part B, Section 12, paragraphs 12.195 to 12.196.

systems as part of proposed billing system replacement programmes, which we understood to be broadly expected to complete by the end of 2013.¹²⁵

- 10.70 The majority of stakeholders who responded to this question agreed that an 18 month implementation period was reasonable and necessary. Some stakeholders noted that, given the identified consumer detriment, there was a certain urgency to implementation and 18 months should be a maximum. Others commented that there were still a number of detailed issues to be resolved, and that some of these Ofcom had suggested would be resolved through industry discussion. They emphasised the importance of Ofcom being closely involved and being willing to intervene if required and that there were still major implementation risks and uncertainties that may impact on the timetable.
- 10.71 We set out in Section 5 the various steps that are going to be involved in implementing the unbundled tariff. It is clear that the scale of the changes required is significant, and we do not underestimate the amount of work that will be involved. Therefore, whilst we recognise that there is some urgency to implementation because of the consumer harm currently present in the market, we need to balance this against making sure that there is sufficient time for implementation to be carried out properly to create a new structure that will effectively protect consumers from the harm we have identified.
- 10.72 In the April 2012 consultation we said the 18 month period would apply from the date of our final statement. At that time we had intended to publish our consultation on the modifications to the legal instruments ahead of the final statement. In the event, we are today publishing that consultation, and therefore this means that the 18 month period will apply from the date of our decision to implement our policy decision by amending various regulatory conditions. Given the extent of the changes required and the concerns expressed by some stakeholders about some areas still being subject to uncertainty, we consider that this is a justifiable and necessary approach.
- 10.73 We have set out the proposed modifications to the legal instruments required to implement the changes in Section 6. This includes a proposed requirement in GC17 for a CP to take all steps it considers necessary or as Ofcom may direct in order to fulfil its obligations to retail non-geographic calls in accordance with the unbundled tariff principles. This obligation will take effect immediately on the making of the modifications.
- 10.74 There remain a number of detailed aspects of the structure which will be subject to industry discussions. As set out in Section 5 we intend to be closely involved throughout the implementation process to protect the interests of consumers and to ensure that where issues do come up, they are dealt with quickly.

Summary

- 10.75 Below we set out a summary of the decisions we are minded to take in relation to the implementation of the unbundled tariff:

- **Price publication:**

¹²⁵ Note that there was a typographical error in the April 2012 consultation, instead of January 2014 we stated 2013 (paragraph 12.215). April 2012 consultation, Part B, Section 12, paragraphs 12.201 to 12.220.

- OCPs will be required to, at a minimum, state the pence per minute rate of the customer's AC in his/her bills;
- OCPs will be required to publish their ACs in all their pricing information, their advertising and promotional material and also when a customer is signing up to a new contract; and
- SPs will be required to publish their SCs whenever they advertise their non-geographic number. The ASA and PPP will be responsible for ensuring compliance with this requirement.
- **Establishment, recording and maintenance of SCs for non-geographic numbers:**
 - Ofcom will continue to publish details of each allocated number range block and alongside this information will include the SC for each number range (as part of the National Numbering Scheme);
 - we will not be imposing any additional requirements relating to the process for establishing number ranges, nor SC tariff changes but we encourage the continuation and development of the industry code of practice initiative in this respect; and
 - we are not imposing any additional regulation to ensure access to non-geographic numbers but note that the existing requirements already mean there is an obligation on CPs and that any issues should be brought to us as a dispute.
- **Exceptions to the unbundled tariff:** the following will be outside the scope of the tariff principles and the other requirements we are proposing to implement the unbundled tariff:
 - calls originating outside of the UK;
 - business consumers; and
 - calls made from payphones.
- **Timing:**
 - the unbundled tariff structure will be implemented within 18 months from the date of our final statement on the changes to the legal instruments.