BT's response to Ofcom consultation document

"Service Charge Caps for 09 and 118 Services"

19 September 2012

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1. Executive summary

BT strongly supports Ofcom's proposals to increase the maximum allowable charge, subject to appropriate protections for consumers and against fraud, for calls to Higher Rate Premium Rate Service (HRPRS) numbers. The current limit was set 15 years ago in 1997 and is long overdue a review. The industry has developed almost beyond recognition since then. Today fixed operators are virtually excluded from the market for charitable donations using PRS as a micropayment method because the rules for mobile operators are different. Ofcom's review needs to create a regulatory framework which enables the industry to innovate and develop whilst also maintaining suitable protections.

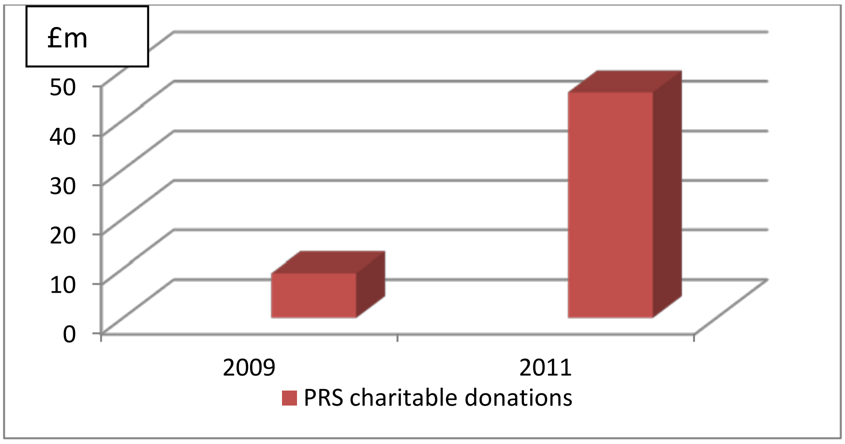
However we do not agree that a cap should also apply to 118 services. By proposing that the cap also applies to service charges for calls to 118 numbers, Ofcom is combining two services with completely different characteristics – the markets, value chains, competitors and customer demands are different between 118 and 09 services. In addition, the market for 118 is highly competitive and there are alternative sources of information e.g. the internet. There is no evidence of existing or prospective consumer harm in this area and we have no evidence of fraud occurring on 118 numbers.

Given these fundamental differences, we've separated our responses to the consultation questions between HRPRS (see section 2) and 118 services (see section 3). We have also included a section on the particular issues that affect payphones. We propose that the simplest solution is for Ofcom to exempt all public payphones from any regulation put in place as a result of this consultation (see section 4). Section 5 contains some questions and comments on the mechanics of implementing the proposals.

The remainder of this response sets our views along with supporting evidence. In summary:

- While we support the assessment criteria Ofcom uses, Ofcom's focus is almost exclusively on the *demand side* with little or no consideration of the ***supply side***, tilting the conclusions Ofcom reaches.
  - For example, there is no criterion on **technological neutrality** or the need to level the playing field between the mobile, online and fixed players.
  - And, most crucially, in the case of 118, there is no criterion on the **degree of competition**, which must surely be the starting point for considering any new regulation.
- For HRPRS, an increase to the maximum caps to £3 per minute and £5 per call is **a good start**, though it does not lead to parity with the mobile operators who face no such restrictions.
  - We want to see **sustainable increases in revenues** and therefore support the continuation of the existing consumer protection measures. We have suggested some additional measures to mitigate the risk of fraud and bad debt.
  - The key point is that fixed networks are **increasingly losing out** in national charity appeals, such as Comic Relief and the Disasters Emergency Committee, because the maximum rates are too low.
  - The charities want to be able to maximise the revenue per caller so they want to get a **£5 or £10 donation** on a call. This compares with less than £1.50 on a fixed network call today.

- **Mobile operators** have been offering £2, £3 and £5 and £10 PRS SMS VAT free services for a number of years. The growth in this sector has been explosive: between 2009 and 2011 PRS **charitable donations grew over four fold from £9m to £46m** according to PPP's data (see chart).



Source: PPP Annual Reports, 2009 and 2011

- It is simply **not worthwhile for charities** to have a fundraising campaign that generates less than £5 a donation. The public do not want to be kept hanging on a call simply to run up enough minutes to get to the same target value as they could with a single text donation. Although some service providers do their best to offer a fixed PRS option, it results in unnecessarily long call hold times and poor caller experience.
- Along with BT, **support from industry** for an increase in the PRS cap has come from C&W, Sky, TalkTalk Group, Colt, Everything Everywhere and Verizon Business (in responses to Ofcom's first consultation on Non Geographic Call Services, or NGCS).
- Amongst **trade groups**, this move has also been supported by AIME, the Premium Rate Association (PRA), UKCTA and FCS. The premium rate regulator, PhonePayPlus, also supports such a move.
- There's **no evidence of higher complaint levels** for premium SMS to mobile short codes compared with mobile calls more widely that would warrant Ofcom not increasing the caps in the fixed sector.

* On the wider points:
    - We agree with Ofcom that the **caps should exclude VAT** so that changes in Government VAT rates can flow to call prices through without an Ofcom review (though SPs should be free to advertise VAT inclusive rates if they chose).
    - **Inflation** is not the only – or most important – factor in setting revised caps. The more relevant influence is the development of SMS short codes and other micropayment methods. PPP defines PayPal micropayments as up to £15 in its April 2012 document which shows how far the micropayment market has moved since Ofcom last set the rate in 1997.
    - Ofcom needs to **commit to a path of future reviews of the caps**, even if these do not occur annually. Otherwise the fixed sector will continue to fall increasingly behind the mobile and online sectors.
    - We support Ofcom's review of consumer protection measures and its conclusion that additional measures are not needed if the caps are set at Option 2 levels. But we do

- have **suggestions for additional protection measures** that we would like to pursue with Ofcom.
- We disagree with Ofcom's **delay to implementing the changes**, i.e. proposal that the changes are introduced from 2014 during the 18 months transition to the new NGCS regime. The will further distort the position for the PRS industry as SMS and other micropayments will have another 2 years to evolve.
- Instead we propose increasing 09 tariffs to £3 as an **interim step** at the end of 2012 (in line with the publication of Ofcom's Statement on NGCS). Without this, charities are denied increased revenues as each month passes and end users are denied the benefits of increased competition and new investments in the industry are discouraged.

For 118 services, Ofcom bases its case for price capping on the assertion that it will help to:

- make prices more transparent
- make prices more efficient
- promote service availability and innovation
- limit the risk of fraud and bill-shock
- limit the risk of bad debt, and
- ensure affordable prices.

Yet evidence for any of these effects has not been provided. The argument presented is a theoretical one that risk in all these areas would be lower with a price cap than without one. But no evidence is presented that risks are at a significant level now, or in any danger of rising, and none as to why risks would rise materially without a cap.

Our response is as follows:

- A better understanding of non-geographic pricing will be achieved by the main NGCS proposal for common service charges on every network, coupled with existing requirements on SPs to make their pricing clear wherever they promote their services.
- There is an obvious case for price maxima linked to 08xx number ranges, unlike 08xx where 08xx has a clear pricing hierarchy and the range of that pricing is relatively narrow. This is not the case for 118.
- There is a wide range of pricing options for customers to choose from. Price/service mix already reflects differing customers' preferences, and that is because of the competitiveness in the market.
- SPs need the commercial freedom to price as they judge appropriate to their service proposition and their customers' needs. A cap will limit their ability to do this.
- 118-related fraud is non-existent, complaint levels (from Ofcom's own evidence) are very low, bad debt is lower than average, and high bills a rarity.

We see no reason why additional regulation should be put in place and do not believe that Ofcom have demonstrated that extra regulation is proportionate or justifiable. These points are set out in more detail in section 3 below.

The following section responds to Ofcom's consultation questions.

2 Responses to consultation questions on Service Charge caps for 09 PRS services

Section 4 questions

Question 4.1: Do you agree with the assessment criteria we are proposing to use for our analysis, and in particular the three additional criteria we have identified as relevant?

BT supports Ofcom's assessment criteria as far as they go, but the focus is almost exclusively on the *demand side* with little or no consideration of the *supply side* (other than the regulatory burden). This makes the criteria unbalanced and therefore tilted in favour of the conclusions Ofcom reaches.

For example, there is no criterion on technological neutrality, which includes the need to level the playing field between the mobile and fixed players in PRS micropayments. Nor is there any criteria on the degree of competition amongst suppliers and the impact that has on protecting consumers from any excesses (see our response to this question for 118 in section 3).

There is evidence that the vast disparity in maximum PRS rates allowed in the fixed sector compared with the mobile sector is handicapping charitable giving in the UK. Comic Relief raised £15m in mobile text donations in 2011 alone, 20% of the total amount raised by Comic Relief that year. Yet fixed operators cannot compete with this - and won't be able to for possibly up to 18 months after Ofcom introduces tariff unbundling, where it's currently planning a statement on NGCS in December this year. Charities and the fixed CPs will continue to suffer until something more comparable to mobile SMS pricing is allowed in the fixed sector. Yet, by focusing on the demand side, Ofcom's assessment criteria give no weight to these points.

In terms of Ofcom's demand side criteria, we have the following comments on the consumer protection criteria:

- Ofcom frequently refers to the PPP code of Practice, which now requires providers of PRS services to be registered with PPP. We believe the relationship with PPP works well and any low price awareness of the cost of 09 calls is already well addressed by the PPP Code of Practice requirement for the prominent and proximate promotion of the price (from a BT landline) alongside the PRS number. Reduced awareness of PRS prices occurs where mobile operators charge significantly more for the same call – without any advantage to the Service Providers.
- The steps already being taken by Ofcom under the wider NGCS Review to separate the access and service charge will help with transparency and make it clear that customers are not paying extra for PRS (it will highlight that the mobile providers' access charges are higher).
- BT is in the unusual position of being an OCP, a TCP and a SP for PR services. BT also has additional obligations under USO and SMP which mean that blocking access to PRS services for certain customers could lead to breaches of those obligations. One way for BT, and any other OCP, to protect itself and our customers from bad debt, is to have the ability to limit access to these services if the customer has proved they are not capable of paying for such calls. As PRS call costs increase, we think that Ofcom should allow OCPs the freedom to do this both for 09 calls and more widely within the NGCS sector.

Question 4.3: BT's response to question 4.3 is contained in Section 3 below.

Question 4.2: Do you agree that a maximum SC should apply to 09 numbers for the reasons set out above?

Yes. BT agrees that a maximum should apply for reasons of consumer protection and the need to minimise fraud. But that maximum should be set at an appropriate level based on a rounded set of demand and supply side criteria and be sufficiently forward-looking to allow the fixed sector to catch up with the mobile sector and enable innovation.

Specifically, PRS 09 tariffs should be treated consistently with SMS short code tariffs and other micropayments methods given the low level of complaints and risks to consumers and OCPs. The lower levels of regulation applied to other forms of micropayments point towards reduced constraints on caps for 09 services. Recently, PPP compared 10 different micropayments methods, including PayPal, and defined a PayPal micropayment as any amount up to £15.[1] Ofcom's proposals fall at the bottom end of PPP's definition of micropayments.

4.4: Do you agree that a different maximum SC for calls charged on a per call basis and calls charged on a per minute basis is appropriate?

BT agrees for HRPRS. This allows CPs greater flexibility in how they structure charges and therefore how they meet consumer needs and demands for different pricing structures from broadcasters, charities and other SPs.

Ofcom seems to suggest that there is greater risk on ppm rates and so the cap should be lower. But there is greater potential for consumer harm for customers making repeat calls on a ppc rate and running up large debts. So, while we agree that Ofcom should not set an overall cap on the total amount of ppm calls, we think that PPP should review their current rules on caps for PRS calls and that this should also apply to ppc rates. This could include a reasonable cap on call volumes to ppc services per CLI per day to reduce the risk of bill shock and bad debt.

See section 4 for our response on payphones where we believe the simplest solution is for Ofcom to exempt all public payphones from any regulation put in place as a result of this consultation.

Question 4.5: Do you agree that we should use the RPI measure of inflation to uplift the BT's current maximum retail price for 09 calls to derive the maximum SC under Option 1?

The RPI has been used in previous consultations and is used to set RPI-X charge controls and as such would seem an appropriate measure to use for indexing prices within the telecoms sector.[2] But BT does not agree that the use of the RPI should:

[1] See "Current & Future Market for PRS 2011", PhonepayPlus, April 2012

[2] Ofcom uses the RPI index (as opposed to the CPI) in setting charge controls. RPI had a good precedent & pedigree in the UK telco sector and Ofcom recently discussed its appropriateness in section 3 of its consultation on the Leased Line Charge Control (5 July 2012)

(a) Necessarily limit the lower end of the range of options, or
(b) Determine the outcome in the case of HRPRS as it doesn't give any scope for innovation or development of new services and is not necessarily the most relevant factor.

In determining the appropriate maximum for HRPRS, this is not a simple updating and indexing exercise. Since Ofcom last determined the rate in 1997, there have been a series of market developments such that the mobile sector (which isn't price constrained, unlike BT) has leapfrogged ahead of the fixed sector. For example, MNOs offer charitable giving and commercial services on short codes at rates including £10 per call. If Ofcom were merely to index the 1997 maximum forward that would only take it to around the level of Option 1.[3] This would fail to recognise what has actually happened in the market. It also assumes that £1.53 ppm (Inc VAT) is the right starting point.

In summary, inflation is not the only – or most important – factor in setting revised caps. The more relevant influence is the development of SMS short codes and other micropayment methods. PPP uses a limit of £15 to define PayPal micropayments in its April 2012 report on "Current & Future Market for PRS 2011" report.

Question 4.6: Do you agree that we should not uplift the SC caps by inflation on an annual basis?

No. Although Ofcom need not necessarily undertake an annual review, it needs to commit to a path of future reviews for PRS caps given:

- The proposed caps are arguably already time expired. A £5 cap is half the £10 level around which many SMS short code prices cluster in the mobile sector. Hence, if Ofcom sticks with its current proposals, the maxima need to be reviewed regularly to ensure the fixed sector is not to continue lag behind the mobile sector.
- Without an Ofcom commitment to an annual or biennial review, we risk facing another 15 years before the cap is reviewed. BT has been requesting a review for a number of years (and many other CPs and trade groups support an increase in the cap)[4] and Ofcom is now consulting. But a 15 year wait is not acceptable. The rates must be reviewed no less frequently than every 2 years.

Question 4.7: Do you agree that the maximum SC cap should be set exclusive of VAT?

Yes. We need to allow for the Government to change VAT rates without the need to rely on Ofcom to conduct a timely review of the maxima. This should not prevent SPs being able to set prices inclusive of VAT if they so choose provided, there is transparency as to whether the prices do or do not include VAT.

Question 4.8: Do you agree that Option 2 (a £3 per minute and £5 per call cap) is the most appropriate maximum service charge limit for 09 and 118 numbers? If not, please explain why.

[3] And Ofcom's calculation only indexed the cap to 2011, not to 2014 or later
[4] See responses to Ofcom's December 2010 NGCS review consultation

For HRPRS, an increase to these rates would be a good start. We welcome Ofcom's commitment to bring rates to a more acceptable level given the dynamics of competition since the maximum was last set 15 years ago. Any increased rate must, of course, be subject to suitable consumer protection measures as we and others in industry want to see sustainable revenue streams. Ofcom has rightly reviewed consumer protection measures and we comment on these in our responses to the questions in section 5.

Our view is based on the following evidence:

- 09 tariffs should be treated consistently with premium SMS short code tariffs and other micropayments as a matter of technological neutrality, to which Ofcom should have regard.
- The level of complaints for these services is low - the latest PPP Quarterly Operation Report shows that less than 10% of total complaints in the PRS sector concern fixed lines. We know of no evidence showing that the levels of complaints on premium SMS short code tariffs are higher than for other mobile calls.
- The significantly lower levels of regulation applied to other forms of micropayment augurs for reduced constraints on a cap for 09. Other micropayment mechanisms (such as PayPal, red button, virtual currencies) do not face the same constraints on maximum levels, yet the payments can be well in excess of those on 09 numbers.

However, we recognise that a higher cap could increase some risks to BT as an OCP. Hence we would like to review additional consumer protection measures that could be put in place. Some options are discussed under our response to question 5.1.

We also disagree that the changes in this document depend exclusively on Ofcom implementing the unbundled tariff model for NGCS. If the NGCS changes do not go ahead, Ofcom should still increase the current caps on 09 PRS that apply to BT under the Numbering Plan given the critical points in this response still apply, i.e. lack of a level playing with mobiles and the 15 year hiatus since rates were last reviewed. There is no reason for Ofcom to drop the changes to higher rate PRS (albeit that the maxima won't apply to "Service Charges" per se) absent the NGCS review changes.

Section 5 questions

Question 5.1: Are there any other consumer protection measures we should consider for the 09 and 118 ranges? Please explain why you consider any additional measures

Ofcom considers a range of consumer protection measures and we support Ofcom reviewing these options. We also make a couple of other suggestions below. As we said earlier in our response, we believe the recent changes to the PPP Code of Practice give greater protection and transparency of pricing information. Furthermore, the unbundled access and service charge model under Ofcom's accompanying NGCS review is aimed directly at improving consumers' understanding of charges and should lead to increased confidence in these services.

BT customers can already block access to PRS calls on using call barring. We believe that the ability to control who we provide these services to is the key factor in these discussions. Other options that we would like to explore, including with Ofcom, include;

- BT (and other OCPs) being able to use PRS barring as standard condition of service in certain segments and as a post-acquisition credit management strategy for higher risk customer groups or individuals.
- For single drop calls at the proposed £5 or £10 charge, having a reasonable cap on call volumes per CLI per day per service.

SPs are already obliged to disconnect customers ("force release") once they have hit the maximum total call cost cap under PPP's current Code of Practice. That is, PPP sets a cap on the total charged for PRS ppm calls over 65ppm (cap currently set at £25.54 plus VAT). Given the changes proposed in this consultation, this limit needs to be re-considered by PPP as soon as possible so that timings and implementation can be aligned.

Question 5.2: Do you have any comments on our assessment of the costs and benefits of a pre-call announcement on the 09 and 118 range? Please provide reasons for your view.

We agree with Ofcom's assessment that PCAs are not necessary at the service charge maxima that Ofcom is proposing in this consultation. This is for a number of reasons including:

- There is some evidence, including that quoted by Ofcom, that consumers can find them intrusive and annoying (our data shows c 42% of customers would find them annoying). The incremental benefits of PCAs are unlikely to outweigh their costs.
- The PPP 12th Code of Practice mandates that al advertising of 09 numbers must make the pricing clear to the customer *prior* to making the call, which should address the underlying concern.
- There is no equivalent for premium SMS short codes (where a virtual receipt is sent to the customer after the transaction) and we know of no evidence of increased consumer harm using this micropayment method.
- For high volume, short duration calls (such as televotes), the addition of a PCA would extend call length and cut available national capacity by [**CONFIDENTIAL:**].[5]

Question 5.3: If relevant, please provide an estimate of the likely costs that you would incur if a pre-call announcement were implemented on these ranges, taking account of any benefits it may bring.

BT has previously looked at the feasibility of pre-call announcements for calls to PRS numbers, but this was under the existing NTS system where the PCA would be played by the *originator*. In this

[5] Say a PCA lasted 21 seconds on a televote call that normally lasts around 7 seconds. There is a limit to the number of calls that can be handled concurrently in mass voting shows. An increase in calls duration from 7 to 28 seconds would cut available national call capacity by [**CONFIDENTIAL**
].

case, Ofcom is considering a PCA played by the *terminator*. BT does not have cost benefit estimated under this structure.

If the PCA is to be played by the terminator (as they know the Service Charge rate) and not charged to the caller, this raises a number of issues that would need to be factored into a cost benefit analysis:

- For the duration of the message, what would be the assumption about whether the originator (a) applied an access charge, and (b) charged the terminator for network usage as no costs are being recovered from the caller?
- For the rate under (b) would this be the same as 0800?
- Also, in the case of a transit call, can the TWIX be charged to the TCP (TWIX is the transit conveyance charge paid to BT?)

This would impact the billing system, but it is hard to estimate in what way until the network solution is known. However, if interconnect is charged during the pre-call announcement CPs would need to make sure they got an answer signal back so that there is an effective call. It is not clear how this would work – will the message be played after the ring tone when the far end picks up, or played first followed by the ring tone (which may be preferable, but then how would an effective interconnect CDR (Calling Data Record) be generated)?

We have looked previously at the PCA being played by the originator, as was (briefly) done for 070, but this was under the system where the OCP set the retail rate, rather than the TCP setting the SC, so this approach does not work under Ofcom's proposals here.

It is far from clear how a PCA would work under the NGCS model and, most crucially, whether the benefits of imposing it would outweigh the costs. Given Ofcom's guiding principle to act with a bias against regulation, imposing PCAs is not justified at present.

Question 5.4: Do you have any comments on our assessment of the costs and benefits of a consumer opt-in for 09 and 118 numbers? Please provide reasons for your view.

A number of years ago when PRS was a major consumer issue, an opt-in system was put in place for PRS. This barred access unless the customer specifically opted-in to the services. But this generated a lot of complaints from the PRS industry alleging this was anti-competitive and that BT was blocking legitimate commercial offerings. Ofcom has noted that this could also lead to issues under numbering obligations.

This approach also seems to cut against one of Ofcom's objectives to promote competition. If this were limited to higher rate PRS, how would BT and other OCPs identify such services? A separate number range might be needed, but that does not seem to fit well with principle of greater simplicity in the wider NGCS review.

It is also unclear how this fits with other areas of regulation where BT is being pushed to have open access – such as net neutrality. And there are currently media calls for blocking of adult content sites by default which we believe is beyond our remit as a Communications Provider and would set us in judgment over what is and isn't appropriate content. Blocking PRS calls would also require us to make a judgment on what is acceptable, and we do not agree that this is an appropriate role for a CP.

Question 5.5: Do you have any comments on our assessment of the costs and benefits of time-related notifications on the 09 and 118 range? Please provide reasons for your view.

We agree with Ofcom that time-related notifications are unnecessary where clear, pricing information exists, as is the case for higher rate PRS calls. We also agree that it will be costly to implement beyond the existing PPP call cost requirements and that is will be of limited use in reducing fraud.

Question 5.6: If relevant, please provide an estimate of the likely costs that you would incur if time-related notifications were implemented on these ranges, taking account of any benefits it may bring.

Please see response to question 5.5.

Question 5.7: Do you have any comments on our assessment of the costs and benefits of dedicated number ranges on the 09 and 118 range? Please provide reasons for your view.

BT agrees with Ofcom that this is unlikely to be a feasible option. Call barring is likely to be hard to implement at the 09x level as well as hard to justify in regulatory terms. The question then becomes: does it help tariff transparency? BT's view is that it may do, but not materially.

Question 5.8: Do you have any comments on our assessment of the costs and benefits of an extension of the 30 day withhold period on the 09 and 118 range? Please provide reasons for your view.

We agree that this is unlikely to have a material beneficial impact at a regulatory level. But it could still be usefully used by TCPs on a SP by SP basis as a commercial tool or within the specific PPP Prior Permission regime.

Question 5.9: Do you agree with our assessment that additional consumer protection measures would only be justified if SPs are able to set SCs for services on 09 and 118 with the ranges proposed under Option 3? Please provide reasons for your view, including, if relevant, the measures that you consider would be appropriate.

We do not think consumer protection measures beyond (a) the existing ones including PPP's current regime (b) the transparency benefits that are expected to flow from the changes to the NGCS regime, and (c) the additional measures we've outlined in our response to question 5.1 are warranted. This for the reasons set out in our responses to the previous questions above in our Executive Summary.

By implementing Option 2 as a start at the end of 2012 and reviewing regularly, increases to the cap can be implemented with no expected significant increase in consumer harm.

Section 6 questions

Question 6.1 – Do you agree that the level of the SC should be set at £5 per call and £3 per minute and that no additional consumer protection measures will be required? If not, please provide alternative options and evidence to support your preferred option.

Please see our responses to questions 4.8 and 5.1 to 5.9. Please see our separate responses to these questions for 118.

Question 6.2 – Do you agree with our proposals in relation to the timing of our proposals for a maximum SC charge for 09 and 118 numbers taking effect?

Given that Ofcom has stated that there are no material levels of complaint or risk with 09 services and that SMS short codes currently offer £10 tariffs (and are able to charge much more if they wish), there is no justification under Ofcom's own criteria not to increase the cap until 2014 (assuming no further delays in this consultation process). Increasing 09 tariffs to £3 as an interim step at the end of 2012 (in line with the publication of Ofcom's NGCS Statement and implementation plan) would introduce consumers, operators and service providers to higher value services and not interfere with Ofcom's plans to introduce unbundled pricing. Such a move would also deliver a consistent and balanced regulatory regime. PPP Prior Permission could be used to ensure that the changes are used positively. BT and other OCPs lose ground to the MNOs on premium SMS - and charities are denied increased revenues - as each month passes. This also denies end customers the benefits of increased competition.

3 Responses to consultation questions on Service Charge caps for 118 services

As set out in the Executive Summary, BT does not agree with Ofcom's proposals for 118 services. This is supported by the following points:

Price transparency
A better understanding of non-geographic pricing will be achieved by the main proposal for common service charges on every network, coupled with existing requirements on SPs to make their pricing clear wherever they promote their services. There is an obvious case for price maxima linked to 08xx number ranges. It is a simple idea, 08xx has a clear hierarchy of pricing, and the range of prices is relatively narrow. This is not the case for 118. Prices range from around 25p per call to more than £2 per minute across a single 118 number range. To say that 118 calls cost a maximum of £5 per call or £3 per minute is over-simplifying, misleading and potentially harmful for both consumers and providers.

Efficient Prices
As noted, there is a wide range of pricing for customers to choose from. Price/service mix already reflects differing customers' preferences, and that is because of the competitiveness in the market.

More would be done to help customers' preferences by the unbundled tariff proposal itself rather than Ofcom's proposals here. Capping will not help this in any way. It may prevent customers exercising their preferences for higher-value services, such as International DQ.

Service Availability and Innovation

SPs need the commercial freedom to price as they judge appropriate to their service proposition and their customers' needs. A cap will limit their ability to do this. Ofcom's proposed cap would threaten a significant niche in the existing market, i.e. International DQ, where most pricing is already above the proposed caps. To insist on this would hasten an exit from the market as margins decline.

Future development of existing and new services is likely to be at the higher end of the market, as voice DQ continues to decline as a result of online search from PCs, tablets and smartphones. It is more likely that services will need to be feature-rich and high-quality to have any appeal over the free alternatives. That will need higher pricing to make it commercially viable. Caps would lessen the attractiveness of investment and make innovation and development far less likely.

Fraud, bill-shock, bad debt and affordable services

As noted in our responses to the questions, 118-related fraud is non-existent, complaint levels (from Ofcom's own evidence) are very low, bad debt is lower than average, and high bills a rarity. There are clear reasons for this. Calling DQ is not addictive or compulsive behaviour. The key risk area of onward-connected calls is covered by mandatory price-warnings.

Though prices for some services have increased, any DQSP wanting to drive interest in its services is obliged to make pricing clear in its promotions. There is, and always has been, an excellent range of cheap services widely available to customers. They exist as a result of the market responding to varying customer needs in an appropriate way. Existing PPP regulation is effective in controlling risk to consumers, as also noted by Ofcom. Ofcom have not justified their assertion that there is a material risk of pricing becoming exploitative without capping.

Conclusion

We see no reason why additional regulation should be put in place and do not believe that Ofcom have demonstrated that extra regulation is proportionate or justifiable.

Question 4.1: Do you agree with the assessment criteria we are proposing to use for our analysis, and in particular the three additional criteria we have identified as relevant?

BT agrees with Ofcom's assessment criteria as far as they go and with the two additional criteria.[6] But we disagree with the conclusions reached by Ofcom. The focus is almost exclusively on the demand side with little or no consideration of the supply side. This makes the criteria unbalanced and in BT's view, tilted in favour of Ofcom's conclusions.

In the case of 118, there is no criterion on the degree of competition in this market, which is at the heart of the EU regulatory framework and must surely be the starting point for any consideration of

[6] BT can only see two additional criteria (paragraph 4.16): consumers' exposure to fraud and bill shock; and CPs' exposure to bad debt. Is Ofcom proposing an additional criterion that has accidentally been omitted from the consultation or should the question refer instead to two rather than three additional criteria?

further regulation. The 118 market is already highly competitive after being liberalised by Oftel in 2002 and customers can choose a range of providers. The obligations from PPP's Code of Practice mean that 118 prices must be included on all advertising and promotional material. The key issue on these prices is that other operators, especially on the mobile side, charge considerably more than the SP prices. Ofcom already acknowledges that the unbundled model proposed under the wider NGCS review should give much greater transparency and help alleviate any customer confusion.

Question 4.3: Do you agree that a maximum SC should apply to 118 numbers for the reasons set out above?

No, we do not agree that there is any need for a price cap on 118 calls.
We have deliberately separated the replies for 09 and 118 as these are very different services and markets and should not be bundled together. 09 PRS numbers can offer a wide range of services, but 118 is a code specifically opened for Directory Enquiry services and most calls are to get a number for a specific purpose. Calls can be onward connected but the short duration of the majority of 118 calls means that customers rarely run up large bills. It is difficult to see how the market could become any more competitive – or how imposing a price cap will lead to increased competition amongst 118 SPs.

Transparency/Consumer price awareness

As mentioned above, 118 services are already required by the PPP Code of Practice, to give clear pricing information on all marketing and promotional material. We have a productive relationship with PPP and since changes last year, SPs now need to register with PPP to offer premium rate and 118 services. This should help to cut down on abuse by "rogue" providers.

There are believed to be over one hundred 118 providers in the UK operating more than 400 different , services at a range of price points, so customers have wide choice and can use whichever one is the cheapest or best suits their needs. Oftel's aim in liberalising the market in 2002 was to introduce competition between DQ providers by allowing consumers on each network a choice of DQ services and providers. Each service would be available via 118 numbers of the same length to avoid unfair advantages to some DQ providers. The first aim has been achieved with a large number of DQ providers operating on 118 codes. Oftel's second aim however, has been more of a challenge and some OCPs restrict access to the 118 numbers they open for their customers or charge higher prices than the service provider would choose themself. BT has an obligation to open all 118 codes and one way to make sure customers have access to a range of affordable services is to impose similar obligations on all Communication Providers.

Service Availability and innovation

Ofcom states in paragraph 4.69 that the absence of a cap would allow SPs the opportunity to make higher returns on their services, which may also provide stronger incentives for service innovation. Ofcom then go on to say that a cap may give greater consumer protection and improve confidence in the 118 brand, so increasing consumer demand for such services. We agree with the first point but find little evidence that a price cap would help innovation in an already declining market.

Fraud and bill shock

In the consultation, Ofcom mention fraud but do not provide evidence that fraud currently occurs on 118 numbers and indeed says on page 22 of the consultation that fraud appears to be more common on other number ranges. BT has extensive fraud detection and management operations across the whole range of services it provides. We have no evidence of any fraud in relation to 118 services. We see no reason why additional regulation should be put in place and do not believe that Ofcom has demonstrated that extra regulation is proportionate or justifiable.

The risk of bill-shock with 118 calls is not the same as with PRS calls. There is little risk of 118 calls being habit-forming or addictive, or of calls lasting for long durations. People are not using the service for its own sake: they want the telephone number they're after as quickly as possible, then get off and call that number just as quickly. What gives rise to the risk of bill-shock is onward-connection, but that is effectively managed by the mandatory price warnings when onward-connection is requested.

[CONFIDENTIAL: To put this in perspective, here are some statistics on BT's 118500 service:

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In the consultation Ofcom show that complaints about 09 & 118 to PPP have dropped and in 2011 fell to below 40. This is very low, especially when put in context of the total volumes of 118 calls made. There were 86 complaints about DQ services to Ofcom's Advisory Team of which some may be duplications of those with PPP. In 2011 the number of calls made to 118500 alone was **[CONFIDENTIAL:]** so when put into perspective, the number of complaints is miniscule and does not show consumer detriment in this sector. Ofcom go on to say in paragraph 4.52 that fraud and bill shock have been limited by the effectiveness of the PPP code and consumer awareness. We agree. We are unclear therefore why Ofcom feels the need to impose price limits on 118 when pricing does not seem to be a problem.

Bad debt

As BT is also an OCP, we agree that reducing the risk of bad debt is a positive step and will help to ensure that the forthcoming Access Charge is not set at too high a rate. However, bad debt for 118 calls is in fact not only very much lower than for PRS calls, it is below the average for all services, and half the rate of even normally-priced geographic calls, as the following table shows.

[CONFIDENTIAL:

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Access to DQ services at affordable prices

As mentioned elsewhere, there is a wide range of customer choice in prices and services. Apart from the higher-priced services with a richer service mix, there are many low-priced, more basic 118 services.

For example, the following prices are some of those available from BT lines for a number of fixed-fee, basic DQ services:)

- 32.3p, 35.5p, 40.7p, 50.0p, 61.2p *(inc VAT. Prices per call at August 2012)*

All of these charge bands are currently carrying actual, measurable traffic [**CONFIDENTIAL:**]. All these services are available to all BT customers, though possibly not to customers of all networks, as there is no end-to-end connectivity requirement on other operators. They exist because the market is competitive, and these price/service propositions are judged by DQSPs to appeal to that particular customer segment.

Customers can and do choose lower-priced services. Those services are affordable. Imposition of a £3 per-minute or £5 per call cap, as Ofcom propose in Option 2, would not affect affordability. Ofcom can best assure affordability (and choice) in the DQ market with a requirement on all networks to provide access to all codes and by ensuring that networks actually charge the price intended, as Ofcom propose under the unbundled tariff proposal.

Question 4.4: Do you agree that a different maximum SC for calls charged on a per call basis and calls charged on a per minute basis is appropriate?

As we do not agree that there should be any price cap on 118 calls, we do not think this question is relevant. The only point we would make is that many 118 services apply a connection charge and a ppm rate and so the comparisons Ofcom has done on ppm rates do not seem to take this model into account.

Additionally, the split tariff used to ensure a sufficient cost recovery means the first call minute already exceeds £3 for some international DQ services. Without a split tariff, the pence per minute rate would be even higher to offset the risk of under-recovery on a short duration call. The call volumes for international DQ are extremely low and there is therefore, considerable risk that any price cap would make these services not viable in the future. In stark contrast to UK telephone numbers which are generally available from a variety of alternative media to 118[7] international numbers can be harder to track down and the loss of these 118 services would therefore be detrimental to consumers. Ofcom must ensure international DQ continues to be commercially viable and the simplest, most transparent way to do this is not to apply a price cap to 118 calls.

Question 4.6: Do you agree that we should not uplift the SC caps by inflation on an annual basis?

Given we do not believe price caps are appropriate for 118 services this question is irrelevant.

Question 4.7: Do you agree that the maximum SC cap should be set exclusive of VAT?

As we have already advised in our reply to Q4.3 we do not believe there should be a price cap on 118 calls so this question seems irrelevant.

But, if Ofcom does believe a price cap is needed then we think ex VAT rates are the most appropriate. We need to allow for Government to change VAT rates without adversely impacting on SP prices, or needing a lengthy process to change any cap imposed. This should not prevent SPs from advertising their price points inclusive of VAT, not least as this is current practice.

Question 4.8: Do you agree that Option 2 (a £3 per minute and £5 per call cap) is the most appropriate maximum service charge limit for 09 and 118 numbers? If not, please explain why.

We do not believe that any cap should be imposed on 118 calls. But we would question whether these price points reflect a sensible price based on Ofcom's own analysis. This cap may allow some headroom for 118 UK services, but for our international DQ service the current price point is already higher than the Option two caps proposed by Ofcom. Ofcom say in paragraph 4.148 that as the DQ prices above this price point are only a very small percentage then it can be disregarded. We are not sure it is as simple as that – this suggests that 118 SPs should be prepared to offer services at a loss to fit into the price cap and it seems more likely this could lead to services with a higher cost base, such as international DQ, being withdrawn.

Question 5.1: Are there any other consumer protection measures we should consider for the 09 and 118 ranges? Please explain why you consider any additional measures

Ofcom considers a range of consumer protection measures and while we support Ofcom reviewing these measures, we do not believe Ofcom has made a case for any of them to apply to 118 services. As stated in our reply to Question 4.3, we do not believe Ofcom has demonstrated consumer

[7] The Phone Book and other paper directories, internet directory services, internet search engines; specific company/service websites, marketing or service literature etc.

detriment or a need for price capping on 118 services. As we have already stated, and as Ofcom also states, the PPP CoP give transparency of pricing information and allow customers to assess the price for calls. And the unbundled access and service charge model under Ofcom's accompanying NGCS review is aimed directly at improving consumers' understanding of charges and should lead to increased confidence in these services.

Question 5.2: Do you have any comments on our assessment of the costs and benefits of a pre-call announcement on the 09 and 118 range? Please provide reasons for your view.

Question 5.3: If relevant, please provide an estimate of the likely costs that you would incur if a pre-call announcement were implemented on these ranges, taking account of any benefits it may bring.

We have combined these answers. Please see our response above in section 2 on 09. We agree with Ofcom that we do not think such measures are necessary or proportionate.

Question 5.4: Do you have any comments on our assessment of the costs and benefits of a consumer opt-in for 09 and 118 numbers? Please provide reasons for your view.

We are glad that Ofcom is not considering opt-in to 118 as a viable solution. While we understand this could be an attractive option for OCPs to protect revenue and stop bad debt, we would question how it fits with Ofcom's duty to promote competition and the duty to allow access to a directory enquiry facility under USD and General Condition 8. We have already given some points in our 09 HRPRS reply, and many of these also apply to 118 services.

In our reply to price caps on 09 services we have suggested that we should be able to block HRPRS calls to certain customer segments if they have not proved their credit worthiness, but this is very different from a blanket block on all PRS and 118 numbers. We believe that any move would lead to disputes from 118 providers and allegations of anti-competitive behaviour. It could effectively lead to the destruction of the 118 market if customers did not bother to opt-in to these calls.

If Ofcom only meant this in relation to HRPRS or higher rate 118 calls then we are not sure how these would be identified, unless they were on a specific number range and Ofcom has stated that this could not apply to 118 services. We agree.

Question 5.5: Do you have any comments on our assessment of the costs and benefits of time-related notifications on the 09 and 118 range? Please provide reasons for your view.

We agree with Ofcom that time-related notifications are unnecessary where clear, pricing information exists, for example, for onward-connected calls.

Question 5.6: If relevant, please provide an estimate of the likely costs that you would incur if time-related notifications were implemented on these ranges, taking account of any benefits it may bring.

Given our view that time-related notifications are unnecessary, the resource required to cost estimate was disproportionate. We are therefore unable to provide likely costs.

Question 5.7: Do you have any comments on our assessment of the costs and benefits of dedicated number ranges on the 09 and 118 range? Please provide reasons for your view.

As Ofcom states at 5.42, this is not applicable to 118.

Question 5.8: Do you have any comments on our assessment of the costs and benefits of an extension of the 30 day withhold period on the 09 and 118 range? Please provide reasons for your view.

The lack of any evidence of 118-related fraud suggests that this is unnecessary.

Question 5.9: Do you agree with our assessment that additional consumer protection measures would only be justified if SPs are able to set SCs for services on 09 and 118 with the ranges proposed under Option 3? Please provide reasons for your view, including, if relevant, the measures that you consider would be appropriate.

We do not believe there is a need for any price caps on 118 services. Ofcom have not demonstrated consumer detriment and the current system under PPP seems to be working well. Additional regulation seems to be disproportionate and have not been objectively justified. Our points are set out in response to earlier questions but in summary:

- Ofcom has itself stated that there are low complaint volumes on 118 services;
- No evidence of fraud has been demonstrated by Ofcom and BT has no evidence of any 118-related fraud.
- It is already a competitive market with range of alternative source of directory information, including online and the Phone Book.
- PPP's CoP already obliges providers to give pricing information on marketing and promotional material. Any confusion is mainly caused by mobile higher prices, not SP charges and this will be remedied by the unbundled model.
- Customers have choice in the market and can use a range of 118 services, many of which have very affordable prices. If Ofcom want to make sure this continues to be the case, then parity on opening all DQ ranges is a better way to do it

Question 6.1 – Do you agree that the level of the SC should be set at £5 per call and £3 per minute and that no additional consumer protection measures will be required? If not, please provide alternative options and evidence to support your preferred option.

No, we do not agree on any price caps being needed for 118 as we have already stated in our responses to earlier questions.

Question 6.2 – Do you agree with our proposals in relation to the timing of our proposals for a maximum SC charge for 09 and 118 numbers taking effect?

We do not believe a cap should be imposed on 118 services. But if Ofcom do conclude that a price cap is required on 118 calls then we would ask they engage with SP industry to understand the impact and get a better understanding of implementation costs and timescales.

4 PRS and 118 calls made from Payphones

Given the payphone calls sector differs from any other captured within Ofcom's NGCS review, our comments here are distinct and separate from the other areas of our response. We believe our comments apply to all UK public payphones and are not therefore limited to those operated by BT. Payphone usage is continuing to decline and NGCS chargeable calls now make up just [**CONFIDENTIAL**:] (down from [**CONFIDENTIAL:** in the prior year) of total payphone call volumes. We believe this trend will continue in a regime where pricing is applied with greater consistency across all networks.

When considering payphone compliance with the outcome of this consultation we refer to the detail of our response of 27 June 2012 to Ofcom's *"Simplifying Non-Geographic Numbers"* consultation at: http://www.btplc.com/Thegroup/RegulatoryandPublicaffairs/Consultativeresponses/Ofcom/index.htm.

Essentially, our position remains unchanged and we believe the simplest solution is for Ofcom to exempt all public payphones from any regulation put in place as a result of this consultation.

Payphones are unique as there is no end-user associated hardware cost and neither line rental nor any monthly charge is paid by customers to offset the overhead of provision. Ofcom's proposals will allow us to retain the minimum fee, helping to offset our costs. However, it continues to be the case that payphones cannot apply any pence per call prices and the cost of modifying them to do so is such, that we would elect instead bar all these NGCS services to prevent the risk of fraud.

From a customer perspective, cash calls from Payphones are effectively "pay as they go", and customers can choose to continue to insert more money to continue the call or hang up. There is no risk of unexpected charges post-call for cash calls. If customers want to find out the price of a call before making it, and these specific call charges are not displayed, they have the option making a freephone call to find this information out.

There are additional issues relating to 118 services and imposing price caps that have the potential to expose payphone providers to unacceptable risk of under-recovering their costs:

- Payphones are not configured to take DQ calls using a credit/debit card, and it's not economic for us to invest the money so that they will.
- DQ calls are available via BT Chargecard, but the volumes are sufficiently low as to be insignificant. In the last 12 months fewer than [**CONFIDENTIAL**] calls were made, [**CONFIDENTIAL**]. This figure has further declined over the last 6 months.
- Call prices for 118 calls are displayed on user notices within payphones, and updating these carries significant cost [**CONFIDENTIAL**:]. We would therefore want to avoid any changes which result in a requirement to change all user notices.
- Payphones cannot implement mixed tariff prices that include a minimum charge or minimum duration and instead, translate these into a pence per minute rate that allows sufficient recovery via the minimum fee, as this is the only guaranteed payment received from the calling customer;
- Regardless of the actual level of any potential price cap on 118 and 09 services, compliant implementation exposes payphones to the risk of under-recovering the cost of the call. This is because payphones cannot apply the access charge/service charge model without adapting their

overall pence per minute price to recover both charges simultaneously. Where SPs choose a price at or close to the cap, there is no headroom for payphones to increase this price to include their equivalent of the access charge.

Given these limitations, we see only two possible options. Either that payphones are exempt from any price caps put in place, or, that payphones have sufficient freedom to bar services that are priced in excess of what can reasonably be done to allow for recovery of costs via the minimum fee. We have no desire to reduce further the value of payphones to end-users and so have strong preference for an exemption.

Payphones take payment from the caller in cash at the time the call is made. For this reason Ofcom's questions do not apply and we have chosen not to provide answers on that basis, except where referenced above.

5 Implementation points & questions

We have a number of questions and points to make over implementation that will need addressing with Ofcom before the changes are made.

5.1 Number of price points for Service Charges

We understand that Ofcom is keen to keep the number of Service Charge price points down and possibly not more than c60 for the existing 09 range.[8] Yet this will limit what SPs can offer their customers. Ofcom wants to emulate a competitive market and in such a market there would be no such limitations. Hence we do not agree that Ofcom should limit the number of SC price points to this level. Whilst we understand – and share – the desire for consumer price transparency, once there are more than a certain number of price points consumers are unlikely to remember them, hence the addition of further ones is unlikely to diminish price transparency.

We do not know what services will emerge over the coming years and what pricing and price flexibility will be appropriate, so believe constraining prices could damage development, competition and customer choice.

5.2 Call rounding

Ofcom does not discuss call rounding in the consultation. Paragraph 4.82 says:

> *a price per minute tariff indicates the price charged for every **minute** of the call. A difference with the price per call is that the price per minute does not reflect the total price of the call, which will depend on the duration of the call* [Emphasis added].

Interestingly, Ofcom does not refer to second (or deci-second) of the call. Is Ofcom's intention that that the call is priced in 60 second (one minute) "chunks" and that OCPs should therefore round the duration up to the next full minute (or that a TCP can charge BT in this way)?

[8] See Ofcom's April 2012 NGCS consultation

The issue of rounding rules has also arisen on the wider NGCS review. We suggest the same approach ultimately chosen for NGCS is adopted here, once decided. The rules must be applied reciprocally across industry.

5.3 Call set-up fees

We need to work with Ofcom on how the "set up fee" option will work. Paragraph 4.89 says:

> *We are aware that some services on these ranges are charged on a combination of a per minute tariff and some form of one-off set up charge. Under our proposal, SPs wishing to use this type of tariff structure will need to comply with the maximum SC per minute that we adopt. For example, in the event of* ***a maximum SC cap of £2****, a SP could not charge a call set up fee of £3 and thereafter a £1 per minute charge for its services, on the basis that the average ppm of the call would be within the cap. Each per minute charge must be within the maximum cap that is set.* [Emphasis added]

Yet Ofcom's proposal is for ppc and ppm caps to be set differently (we've raised in our response the need for PPP to revisit the maximum total price of a ppm call). When Ofcom refers to a maximum SC cap of £2, what is this referring to? Is it that, where there is a set-up fee, the cost of the first minute (which will include the set-up fee) must not exceed the per minute cap? We assume that a set-up fee with the ppm starting after 60 seconds is an allowable structure and that the set-up fee can be set to the ppm cap (as this is all that will be charged for the first minute).

5.4 Internationally originated PRS calls

We assume that internationally originated PRS calls will continue to be barred.

5.5 Hyper short calls

We sometimes have issues with "hyper short calls." These are (typically) fixed fee calls which transit BT, with the called end answering and generating an outgoing call record, but the calling end hanging up before the answer signal gets back to create in incoming call record. We suggest, as we have at the industry-wider NTS Focus Group, that a fixed fee call must have a minimum duration before the fixed fee could be levied. With an increase to the fixed fee value, there may be future problems with these hyper short duration calls (usually if/when spotted payment is withheld under AIT rules, but that still takes time and resource).

END