

CABLE&WIRELESS RESPONSE TO WHOLESALE CHARGES FOR NUMBER TRANSLATION SERVICES AND PREMIUM RATE SERVICES

Cable&Wireless

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INTRODUCTION

Cable&Wireless is one of the world's leading international communications companies. It operates through two standalone business units – Worldwide and CWI.

The Worldwide business unit provides enterprise and carrier solutions to the largest users of telecom services across the UK and the globe. In October 2008 Cable&Wireless strengthened its position when it acquired UK business communication provider THUS. With experience of delivering connectivity to 153 countries – and an intention to be the first customer-defined communications service business – the focus is on delivering customers a service experience that is second to none. More information on Cable&Wireless can be found at: <http://www.cw.com/>

Today Cable&Wireless has the necessary scale to meet the needs of UK enterprise customers and we are a strategic provider of voice services to both the UK public and private sectors, offering a range of innovative and market leading voice products. Our customers include most of the UK's top companies and public sector organisations, each of whom has placed its trust in Cable&Wireless to deliver an array of business critical services.

We are a large network supplier of Number Translation Services (NTS) and Premium Rate Services (PRS) in the UK, supporting the many businesses and organisations that rely on these services to communicate with their customers.

Cable&Wireless welcomes this opportunity to respond to Ofcom's consultation on wholesale charges for NTS and PRS. We fully support Ofcom's decision to reconfirm a charge control on the NTS Retail Uplift for a further four years. Given the SMP nature of the service we believe this a necessary step to guard attempts by BT to try to over-recover when originating calls to number translation services.

We are very disappointed with Ofcom's proposals for the PRS Bad Debt surcharge. We can not accept that the level of bad debt experienced by BT is outside their control. We would question the integrity of the figures presented by BT and believe far more information and investigation is required before Ofcom can reach a conclusion on this issue. We strongly suspect that if the figures

are correct BT has failed to act effectively when it comes to collecting retail PRS revenues and has not used the many safeguards available to it. We therefore don't believe that terminating communication providers should pay the price for BT's ineffectiveness, especially when they have no contractual relationship with end users or means of blocking the traffic. At the conclusion of this review we believe Ofcom must set a bad debt surcharge at a reasonable level based on efficient network operator principles to ensure BT has adequate incentives to maintain efficiency and protect retail revenues.

In the remainder of this response we examine each issue in turn, addressing the Retail Uplift and Bad Debt Surcharge in separate sections for ease of presentation. We have also included comments from Cable&Wireless customers outlining the impact Ofcom's proposals will have upon their businesses. These comments have been included in Annex A.

SECTION I: RETAIL UPLIFT

EXECUTIVE SUMMARY

- We welcome Ofcom's confirmation that a further four year control charge control will be imposed on BT's pricing for the NTS retail uplift. Such regulatory intervention is necessary to prevent BT from trying to maximise its profits in providing this SMP service.
- Cable&Wireless welcomes Ofcom's recognition of the continued need for the call origination condition to secure the future success of NTS in the UK, supporting the sectors of the economy that are either directly or indirectly reliant on NTS and the revenue created by it.
- We would urge Ofcom to remove any retail uplift cost elements associated with BT 'winback' activities. These activities are carried out to the detriment of other CPs, (who are mostly CPSOs). The inclusion of BT's winback costs effectively means that BT's competitors are obliged to subsidise BT's attempts to neutralise their own competitiveness. This is an unacceptable situation and Ofcom must revisit this issue.
- Ofcom needs to look again at the efficiency assumptions used in the Retail Uplift model. We believe BT has significant scope for efficiency savings and we believe Ofcom's model should better reflect that opportunity.
- The volume forecast for the Retail Uplift seems overly pessimistic, effectively forecasting for a downturn whilst in the midst of one. We would expect BT's latest retail pricing decision (including 0845 within inclusive call packages) and the response of other originators to this price change to encourage additional NTS calls to be generated and to arrest the downward trend. In terms of PRS volumes we believe that the downward trend is overly pessimistic and again that Ofcom's model forecasts a downturn whilst in the midst of the same. While we acknowledge that volumes have suffered, we believe the industry has reached its nadir and that volumes over the next 4 years will be largely flat, rather than on a continual downward trajectory.

- We welcome Ofcom's subsequent reassurance that BT is required to give 90 days for any pricing changes. The accompanying 56 day notice period required for POLO payments is the minimum required given the structure of the industry and the needs of Service Providers.

INTRODUCTION

We welcome Ofcom's confirmation that a further four year control charge control will be imposed on BT's pricing for the NTS Retail Uplift. Without such regulatory intervention we believe that end users would be left in the unsatisfactory situation whereby BT would try and recover as much as possible from the uplift to maximise its profits in providing this SMP service.

We support the re-introduction of a RPI-X charge control and believe it to be the most sensible and least disruptive way to continue regulation in this area, providing certainty for all market participants. Ofcom is right to guard against any attempts by BT to over state its costs when originating calls to NTS as past experience has taught us that BT will try to include additional cost items in order to maximise profit.

We are of the firm belief that those organisations and terminating communications providers who use and promote NTS are the ones responsible for stimulating demand for calls to these services, through the vast range of innovative offerings available on these number ranges. The success of NTS in the United Kingdom is a credit to the many UK businesses and organisations that make use of these popular numbers. Number Translation Services remain both recognisable and well received by the vast majority of UK consumers and it is important for Ofcom to reconfirm its continued support for this sector of the UK's communications landscape.

In this section we pick up on some of the key issues relating to the Retail Uplift, before turning to answer the specific questions posed by Ofcom in the consultation.

CONTINUING NEED FOR THE NTS UNDERPINNING

The future success of NTS and those economic sectors either directly or indirectly reliant on these services and the created revenues depend on the regulatory underpinning of the NTS regime. Even in this web-enabled age, a great number of UK businesses are either totally or partially reliant on NTS to reach their customers, with NTS continuing to act as both a direct channel to market and an important customer support tool.

We note with concern the arguments BT advanced in their response to both the retail & wholesale narrowband review consultations in respect of the future of the Call Origination condition which underpins the wholesale interconnect arrangements for number translation services in the UK.

BT has taken a very simplistic view of the reasons why they believe the NTS Call Origination Condition should be removed, citing Ofcom's proposal to remove regulation in the retail market as reason enough for the revocation of the call origination condition. BT has completely ignored the fact that Ofcom's principle justification for proposing to withdraw the SMP finding in the retail market is based on the premise that adequate wholesale remedies would be in place to secure a level playing field in the retail market. The NTS call origination condition is a key wholesale remedy and if it were to be revoked BT would have a considerable advantage over other retail providers when it came to securing termination deals for the NTS traffic which originated on or transited the BT network.

Outside of Ofcom's decision to remove regulation from BT in the retail calls market, it is important to recognise that BT is able to leverage further market power in this market by pooling together traffic from other sources, most of which are very difficult to compete for. As a result in an unregulated market BT would be able to exercise countervailing buying power in the market and would likely be able to secure lower termination rates than its smaller rivals. BT is able to combine the volumes of traffic it receives from BT Retail, Wholesale Calls, the 1280 CPS over-ride and its transit business, making it many times larger than the next biggest purchaser of NTS termination. We estimate that BT currently purchases between 75 – 85% of all UK NTS termination minutes. Faced with this level of overwhelming dominance and in the absence of regulation, any terminating provider of NTS minutes would be at the mercy of BT in order to sustain their business. Retail originators are also

likely to suffer, eventually leading to consumer harm as BT's rivals would be unable to offer competitive pricing across the full basket of retail calls. This in turn could increase BT's market share in adjacent calls markets, undermining the benefits of competition that have accrued in recent years.

In our view the call origination condition is key to both the future competitiveness of the retail calls market and necessary to protect the flourishing and competitive market for NTS in the UK. With such a large percentage of calls in the hands of one purchaser it would be impossible to justify removing such an important condition when it helps to underpin the future competitiveness of two important markets. We therefore fully support Ofcom's proposals to retain the condition in its current form.

REMOVAL OF WIN-BACK MARKETING COSTS

While we recognise the attractiveness of making use of the same cost categories as the last Retail Uplift review, Ofcom must take this opportunity to remove any marketing costs associated with BT's retail or indeed wholesale win back activities. BT Wholesale, and to a lesser extent BT Retail, have been hugely successful in the last two years at winning back a large chunk of their former customer base, decimating the number of CPS enabled lines in the process. It is wholly inappropriate that competing CPs should be subsidising this winback activity.

We believe any costs contained within the Retail Uplift relating to BT customer acquisition and retention activities should be removed. This BT marketing activity is likely to focus on 'winback' (to the detriment of other CPs, who are mostly CPSOs), as BT is effectively the default provider of call origination in the UK due to its SMP status. The fact that BT's competitors are obliged to subsidise BT's attempts to neutralise their competitiveness via the Retail Uplift seems undesirable to say the least. Cable&Wireless and other UK CPs in the origination market do not require BT to acquire and retain customers to help further CP NTS termination businesses, as there are a variety of providers of NTS call origination in the market.

BT EFFICIENCY

In the narrowband market review and network charge control consultation we raised a number of concerns about the efficiency assumption used within Ofcom's modelling. We believe the same issues also apply in this case. Ofcom's current approach seriously underestimates the true extent of the efficiency opportunities available to BT. Contrary to some of the evidence presented by Ofcom, there is strong anecdotal evidence to suggest that BT is far from efficient and there is huge scope for driving forward efficiency savings if BT's management shows willing. We believe the retail costs incurred by BT associated with originating NTS calls are no exception, with a great deal of scope to trim costs to an efficient level.

We would refer Ofcom to our Wholesale Narrowband and Network Charge Control response for a more detailed assessment of the true efficiency opportunity open to BT's business today. We have been reassured that Ofcom has taken notice of the arguments made by stakeholders on efficiency, adapting the efficiency assumptions in the forthcoming NCC as a result. While it is true that some of the scope for a future efficiency frontier shift comes from better network utilisation, including the better use of network assets, a great deal of it relates to all aspects of BT's business including labour costs and overall productivity. We therefore hope that Ofcom will take a consistent approach to this issue, increasing the efficiency factor within the retail uplift model to better reflect the very real efficiency opportunities available to BT when retailing NTS calls.

In the remainder of this section we answer the specific questions posed by Ofcom in the consultation:

RETAIL UPLIFT QUESTIONS

1. DO YOU AGREE THAT RPI IS THE BEST INFLATION INDEX FOR THE PROPOSED CHARGE CONTROL?

Yes, for consistency we believe RPI is the best inflation index to use. It remains well understood by all stakeholders.

2. DO YOU AGREE THAT AN RPI-X CONTROL IS THE APPROPRIATE FORM OF CHARGE CONTROL FOR NTS RETAIL UPLIFT?

Yes, for reasons of consistency, transparency and certainty we believe that it is appropriate for Ofcom to charge control the retail uplift.

3. DO YOU AGREE THAT A FOUR YEAR DURATION FOR THE PROPOSED NTS RETAIL UPLIFT CHARGE CONTROLS IS APPROPRIATE?

Yes, for business planning reasons we would support the introduction of a four year control. The period also aligns with the Network Charge Control covering the conveyance elements of the NTS formula.

4. DO YOU AGREE THAT THERE SHOULD BE A SINGLE PRICE CONTROL BASKET FOR ALL NTS CALLS INCLUDING FREEPHONE CALLS?

We still believe freephone should attract lower retail costs (as a result of the absence of any billing activity and bad debt). We are comfortable with Ofcom's proposal to have a single basket providing BT maintains their undertaking on the pricing. However should BT's balance of traffic shift over time resulting in BT being able to exploit its new found freedom in this area or should BT fail to keep to or remove their undertaking then we would request that Ofcom reserve to right to look again at the issue.

5. DO YOU AGREE THAT A GLIDE PATH, RATHER THAN A ONE-OFF ADJUSTMENT AT THE OUTSET OF THE CONTROL, IS APPROPRIATE?

In order to provide certainty to all market participants and avoid any market price shocks which would have a detrimental impact on consumers we would advocate the use of a glide path.

6. DO YOU AGREE THAT CCA FAC FOR NTS CALLS DRAWN FROM BT'S REGULATORY ACCOUNTING SYSTEM IS THE APPROPRIATE COST BASIS FOR SETTING THE PROPOSED CHARGE CONTROLS?

In the absence of robust LRIC numbers and to ensure consistency with the Network Charge Control we believe CCA FAC numbers would be the most sensible to use.

7. DO YOU AGREE WITH HOW WE HAVE PROPOSED TO ADAPT THE COST RECOVERY PRINCIPLES WE ESTABLISHED IN OUR 2005 STATEMENT TO CURRENT CIRCUMSTANCES?

We support Ofcom's use of the 2005 cost categories for the forthcoming Retail Uplift charge control, with the exception of the inclusion of winback marketing costs which we believe should not be included going forward. Please see the main body of our response for further details.

8. DO YOU AGREE WITH THE WAY IN WHICH WE CONVERT BT'S MEAN CAPITAL EMPLOYED INTO AN ANNUALISED COST?

We believe there are a number of arguments that could be advanced to support using the a lower WACC than that used in relation to other aspects of BT activity. The level of risk to BT in relation to NTS is much lower than for other investments. The charge is levied by virtue of an SMP condition and while demand for NTS minutes may rise and fall depending on market conditions, it is less cyclical than Ofcom suggests in the consultation. We ask Ofcom to consider whether it would be more appropriate to consider adopting a WACC a few points lower and closer to the Openreach WACC of 10.1% for the NTS Retail Uplift.

9. DO YOU AGREE WITH THE WAY WE PROPOSE TO HANDLE RETAIL COSTS TO FREEPHONE CALLS?

Yes. We believe Ofcom's proposed approach to this issue is a reasonable one.

10. DO YOU AGREE THAT WE SHOULD USE NTS CALL VOLUMES TO FORECAST COSTS AND OUR FORECAST FOR THESE TRAFFIC VOLUMES?

Forecasting traffic volumes for particular services four years ahead is always challenging. While NTS volumes have declined in recent years (mainly as a result of migration of dial-up to broadband) we don't necessarily share Ofcom's view that the decline will continue. As the economic situation recovers and new services are launched we may find that NTS minutes have in fact stabilised and could even grow over the life of the charge control. We would urge Ofcom to be cautious in its approach to estimating future volumes and unless compelling evidence is presented to the contrary we believe it would be more sensible to assume volumes remain constant.

11. DO YOU AGREE WITH OUR PROPOSED APPROACH TO EFFICIENCY?

No. The range proposed by Ofcom seriously underestimates the scope BT has for making efficiency savings. We are disappointed by the level of research Ofcom has carried out into the area of BT efficiency. There is compelling anecdotal evidence which points to a high level of inherent inefficiency within BT's organisation and Ofcom should significantly increase this range to more accurately reflect the efficiency savings available to BT. Please refer to the main body of our response for further details.

12. DO YOU AGREE THAT WE SHOULD ASSUME A COST VOLUME ELASTICITY OF 0.25?

Due to the limited information presented in the consultation we feel we are unable to comment on the CVE ratio used. We would welcome Ofcom undertaking a further sanity check into this assumption by reviewing past BT volumes and costs.

SECTION II: PREMIUM RATE SERVICES BAD DEBT

EXECUTIVE SUMMARY

- We welcome the independent review of BT's bad debt reporting and call upon Ofcom to maintain the current surcharge level of 3.03% until this review has been completed.
- We strongly suspect that BT has failed to act effectively when it comes to collecting retail PRS revenues and has not used the many safeguards available to it. We therefore don't believe that terminating communication providers and their customers should pay the price for BT's ineffectiveness, especially when they have no contractual relationship with end users or means of blocking the traffic. At the conclusion of this review we believe Ofcom must set a bad debt surcharge at a reasonable level based on efficient network operator principles to ensure BT has adequate incentives to maintain efficiency and protect retail revenues.
- The proposed Bad Debt Surcharge is entirely disproportionate and its impact across the value chain has not been adequately considered and quantified. A full impact assessment of the entire value chain needs to be conducted to understand the knock-on impact of the increasing bad debt provisions. Ofcom's proposals are founded entirely upon BT's claims at the head of the value chain. The impact on the downstream Service Provider businesses has not been adequately considered, nor has the impact on other parties.
- As an example of the unconsidered consequences; if the PRS Bad Debt surcharge is to be increased threefold, and assuming it is passed in its entirety by Network Operators to their Service Providers, the impact is a dramatic and immediate reduction in the revenue share available to the Service Provider. This has a direct impact on the level of services available to consumers. It also reduces the levy available to PhonepayPlus which would be applied to a reduced revenue share pot. This in turn requires PhonepayPlus to increase its levy in order to make up for the short fall in funding. Once again this is likely to be passed through to the Service Provider by the Network Operator as required by the PhonepayPlus Code. The result is to initiate an increasing spiral of downward pressure that will impact the profitability of those in the supply chain

and ultimately will either have a detrimental effect upon consumer offerings or encourage Service Providers to seek a higher price point (where available) and to recover the reduction in revenue share from consumers directly..

- The Bad Debt Surcharge forecast is based on out of date and irrelevant data. The drivers of bad debt BT has identified are no longer relevant and will not be repeated. Past bad debt performance is not necessarily indicative of future performance and PhonepayPlus' complaint numbers provide clear evidence that compliance issues should not provide any reason for bad debt either currently or in the near future with continued dramatic reductions in the numbers of landline complaints.
- BT has alternative means available to it for managing bad debt. We question whether these are being adequately employed or whether BT is using the surcharge as an excuse to write off otherwise collectable debts. In particular we question the dramatic surge in bad debt accounting that seems to have taken place since the withdrawal of ACCN 762.
- We request that Ofcom provides a clearer explanation of paragraph 1.8 as we do not understand the proportion of recovery BT makes internally and externally. Market data suggests that BT should have a greater percentage of recovery due to its SMP in call origination and the market share of BT Agilemedia for termination of mass call events such as TV voting. Do the figures Ofcom quotes suggest that BT Agilemedia is being treated as an external operator in BT's bad debt figures? We request that the status of BT Agilemedia is made clear during the investigation of BT's bad debt figures in order to establish the extent to which BT's PRS bad debt may be self-inflicted.
- It is our understanding that the Bad Debt Surcharge applies only to 09 numbers as a result of the higher tariffs associated with the range. We ask Ofcom to clarify that this is indeed the case and that the Bad Debt Surcharge in no way covers the 0871 range which has recently been designated as PRS. Cable&Wireless believes that the bad debt associated with 0871 continue to be most appropriately accounted for in the bad debt element of the Retail Uplift.

INTRODUCTION

Whilst we fully accept that BT has the right to recover legitimate additional bad debt costs it incurs when retailing PRS calls in the United Kingdom, we cannot accept Ofcom's initial conclusion that PRS bad debt is outside the scope of BT's control; that BT are powerless to act, and as a consequence it is appropriate to pass on the full burden of PRS bad debt to terminating communication providers who have no contractual influence on the end-users concerned and are powerless to take steps to block the traffic.

Cable&Wireless is a responsible network supplier of Premium Rate Services and we do our utmost to ensure the Service Providers making use of our network do so in a responsible manner, complying in full with all the necessary legal and regulatory requirements associated with offering Premium Rate Services to end-users.

We are suspicious of the levels of reported BT bad debt in the consultation and we would look to task the independently appointed consultant with establishing whether BT was indeed recording bad debt appropriately.

BT manages the exchange lines and the contractual relationship with its customers and like any business dealing with consumers it has to carefully manage bad debt. The levels reported seem extraordinarily high compared with other retail sectors. We are at a loss to understand why the levels have reached such proportions and have been allowed to remain there without BT taking radical action to improve its collection rates and the processes and procedures surrounding PRS bad debt. The levels of bad debt BT appears to be reporting are not those we would associate with a viable business.

We have no doubt BT's new management team will be taking action to assure the revenue streams available to BT, including retail PRS calls, however it is clear, if these figures are to be believed, that BT has taken its eye off the ball and has been less than efficient at dealing with the problem. Indeed we question whether the surcharge has in fact served to disincentivise BT from tackling the issue. We refer Ofcom to ACCN 762 issued on 27/12/06 which BT originally sought to introduce from April 2007 before subsequently withdrawing it on procedural grounds. When ACCN762 was

issued it caused disquiet at the NTS Focus Group due to the size of the proposed increase. ACCN762 sought an increase in the surcharge to 5.97% which at the time was felt to be excessive in light of the improving PRS compliance situation; industry's expectations had been for a reduction. ACCN762 was based on data drawn from 2006, yet BT is now claiming that bad debt was in fact 14.6% for the same period. Such a disparity between the two sets of figures can not be accepted without further detailed investigation. We call on Ofcom to retain the current Bad Debt Surcharge of 3.03% until completion of the independent review.

We can not support an outcome that effectively penalises terminating communications providers and their customers for BT's failure to run its business in a responsible way by failing to introduce the necessary safeguards to protect revenue. BT should only be able to retain an amount that fairly represents the recurring level of bad debt after all necessary safeguards have been deployed to protect retail revenues. We would judge this to be close to the current allowance of 3.03%.

BT has an array of means at its disposal to ensure bad debt stays within acceptable boundaries. Industry co-operation and technology give BT more advantages than most other retailers. BT should be making full use of the following mechanisms to protect its revenues:

- **Agreed Call Limits:** An agreed call limit is set for every customer based on their past bill profile. If the call limit is breached then the customer's outbound call service is suspended until the outstanding bill has been settled. New customers are assigned a relatively low call limit until a bill pattern emerges. Most customers will never know a call limit is in place on their exchange line as they will never exceed the amount allowed. We find it difficult to understand how individual customers can run up large PRS debts when BT is able to use this simple technique to limit its retail bad debt exposure.
- **Active Fraud Monitoring:** BT, like other Communication Providers, has a range of sophisticated fraud monitoring systems at its disposal. It is able to detect unusual activity on any exchange line, including a rapid increase in spend over a short period. Fraud Teams from all UK Communication Providers share intelligence in an effort to prevent fraud and protect their companies and consumers. We are keen to learn from the independent review if BT is making appropriate use of the fraud detection systems available to it.

- **Artificial Inflation of Traffic (AIT) Process:** The industry has an agreed process for AIT that is well understood. We would expect BT to make full use of the AIT process (and indeed our experience suggests that they do, although we question whether it is used in all cases) and not record instances of AIT as bad debt. We are aware in the past that they have classed some incidents as both AIT and bad debt, but we are also mindful that some recorded bad debt would be more appropriately classed as AIT. We would expect the independent review to investigate if BT was correctly assigning AIT, making use of the industry agreed process and whether there is any evidence of AIT revenue being returned to the customer in order to mitigate bad debt.
- **Service Provider Refunds:** PhonepayPlus requires all Service Providers to have a refund process. Before BT writes off any bill amount related to PRS minutes we would have expected BT to have informed the end-user about the Service Provider refund process and asked them to pursue the Service Provider if they believe they are due a refund. We have no evidence to suggest that BT is doing this and we would expect the independent review to look into BT's process to ensure that Service Provider refunds are always pursued.
- **Prosecution deterrent for Non-Payment:** Where end-users refuse to pay or abscond without paying and where there are no mitigating circumstances we would expect BT (like other retailers) to rigorously pursue this form of theft in the courts. A failure to make use of the legal route for non-payment is irresponsible and fails to discourage repeat offenders. Cable&Wireless acknowledges that the legal costs involved may not make this an efficient approach in all cases and that there is a balance to be struck between revenue recovery and legal costs incurred. However we would look to the independent review to ascertain how often BT takes court action to recover unpaid amounts and how BT satisfies this balance between legal costs and debt recovery,
- **Security Deposits / Advanced Payment:** For end-users that have a poor payment record we would expect BT to behave in a responsible manner and require advance payment or a security deposit. In many cases line rental is paid in advance and in instances where payment for line rental has not been received we would expect BT to suspend all non-

emergency outbound calls until the bill is paid. We would expect the independent review of the Bad Debt Surcharge to look into BT's track record in this area.

Unfortunately the consultation does not give any detail on what proactive steps BT has taken to manage bad debt. We would like to understand in more detail why bad debt levels have not spiked in the same manner as PRS complaints to PhonepayPlus and have instead plateaued as well as what steps BT has taken to address this issue. We would look to the independent review to cover this ground, providing a clearer picture of the action BT has/is taking to defend its retail revenues. To do this effectively we believe that one of the tasks that the consultants should undertake is to examine the circumstances around a representative sample of PRS calls which were assigned to bad debt. We'd welcome an assessment of BT's effectiveness at using the means identified above to control retail bad debt for PRS calls.

EFFICIENT OPERATOR PRINCIPLE

Once the independent review has concluded, Ofcom must make a judgement over what level of PRS bad debt recovery should be permitted. We believe the level of permissible bad debt must be set by reference to the amount that would be reasonably expected in an efficiently run and effective communications provider, using all the safeguards at its disposal to secure its retail PRS revenue. By failing to adopt this approach Ofcom would be absolving BT of all responsibilities in this area and creating a regulated inefficiency factor. It is clear from BT's past performance in this area that it has been far from effective and it must improve. The conclusion from this review must not result in responsible terminating operators and Service Providers paying for BT's mistakes or picking up the costs arising from the few irresponsible providers of PRS. Industry processes are both well understood and should be followed to ensure that each provider takes responsibility for its own actions. BT must be made to play its part and we would look to Ofcom to set the correct incentives around both efficiency and effectiveness.

TOO MUCH EMPHASIS ON PARTICIPATION TV PRS AND ROGUE DIALLERS

The consultation puts a great deal of emphasis on the rogue dialler issues and the more recent controversy surrounding participation TV PRS usage. The issue of rogue diallers is confined to the past as end-users have largely moved to broadband. Based on the evidence available we do not believe BT did all it could to protect itself or end-users from this kind of activity during the time it was occurring. The agreed call limit process and other safeguards do not appear to have been effectively utilised to protect consumers from this unscrupulous activity. We would urge Ofcom to ensure any surcharge is forward looking, removing the effects of past occurrences of rogue diallers. This is particularly relevant considering the non-repeatable nature of the issue.

In our view the participation TV controversy is a red herring within the context of this consultation. Responsibility for the issue rests with the broadcasters and not Communication Providers. Ofcom itself has mandated that certain broadcasters refund consumers and all consumer refunds should be addressed to the broadcaster / Service Provider responsible, not the Communications Provider. We would like to understand if BT did all it could to direct its end-users seeking a refund for a Participation TV event to the appropriate broadcaster / Service Provider. BT should not be writing off elements of a consumer's bill without ensuring the correct process has been followed. We hope the independent review will weed out any erroneous recording of bad debt.

TAKE TIME TO GET THE PRS SURCHARGE RIGHT

We fully understand the need to replace the current Retail Uplift charge control, as the current charge control is coming to an end, but we don't understand the urgency around the review of the PRS Bad Debt Surcharge, which was implemented by means of a direction without an expiry date. We believe Ofcom should not rush the review, but take the time to arrive at the correct outcome. The consultants conducting the independent review must be allowed sufficient time to undertake their work and far more information than that presented within the consultation document is needed before the matter of the Bad Debt Surcharge can be concluded satisfactorily. It is important that stakeholders are involved at every stage to provide both insight and the sanity checking of any proposals on the future of the surcharge.

NOTICE PERIODS

We are grateful for Ofcom's subsequent reassurance that BT is required to give 90 days notice of any price changes in relation to either the Retail Uplift or PRS Bad Debt Surcharge. Given the flow of payments within the industry it is imperative that nothing is done to reduce these notice requirements. Any wholesale price change may affect the viability of particular services and it is important to give sufficient time for network providers, resellers and service providers to take action in the face of a price change (such as changing chargeband or giving notice over a change in revenue share).

CONSIDERATION OF BT'S WHOLESALE CALLS CUSTOMER BASE

We would urge Ofcom to consider the very large number of BT end-users (over 4 Million exchange lines – over 10% of the total) who originate calls on the BT network via BT's Wholesale Calls product and who don't drive any incidence of bad debt. BT gets full settlement for these calls from the resellers who own the direct relationship with the end-user and as a result BT does not experience any background level of bad debt when originating these calls. We therefore believe it is appropriate for Ofcom to take this into consideration when calculating the true level of bad debt experienced by BT when originating calls to other CP's Premium Rate numbers, as the current methodology excluded Wholesale Calls traffic to other CP's PRS numbers.

PRS BAD DEBT QUESTIONS

13. DO YOU AGREE WITH THE WAY IN WHICH WE HAVE FORECAST 'NORMAL' BAD DEBT, IN PARTICULAR THAT IT IS REASONABLE TO APPLY A CRR OF 1 AND NO EFFICIENCY ADJUSTMENT?

Based on the evidence presented we believe that there is huge scope for BT to improve its collection rates for PRS revenue. BT does not appear to be following the correct processes or procedures for pursuing non-payment or refund requests nor taking all reasonable steps to recover revenue: writing off a far higher amount of revenue than would be the case in an efficient organisation.

We would look to the independent review to investigate this area in more detail. It is unsatisfactory for Ofcom to mandate an outcome that effectively absolves BT of any responsibility in this area. Please refer to the main body of our response for more details on the reasonable safeguards we believe BT should be utilising to secure PRS retail revenue.

14. DO YOU AGREE THAT WE SHOULD RETAIN THE PRS BAD DEBT SURCHARGE IN ITS CURRENT FORM TO RECOVER BAD DEBT SPECIFIC TO PRS CALLS?

Cable&Wireless agrees with the principle of a Bad Debt Surcharge, but it can not support a proposal to increase this level by 200%.

We fully support the removal of the extra working capital that has been associated with PRS calls. As this is already fully factored in to the recoverable cost base of the NTS Retail Uplift we do not believe that there is a justifiable need to include a separate measure for PRS calls and so welcome its removal.

Ofcom's decision that bad debt should not be subject to an efficiency adjustment we find questionable, particularly in terms of the level of PRS bad debt which BT is reporting. Similarly we would suggest that a 10% bad debt ratio of PRS calls is in itself evidence that BT is inefficient in revenue collection (at least in relation to PRS). We would ask Ofcom to compare this with the bad

debt reported by other similar operators. Anecdotal evidence suggests that this level of bad debt is considerably higher than that experienced by other operators. At present Ofcom's approach fails to take account of this fact and we would request that Ofcom reconsiders this position.

Furthermore we contest that Ofcom is wrong in their assertion that all of the factors related to BT's bad debt are (or will be) outside of their control. The scandals associated with TV voting are a case in point. Irrespective of where the fault lay for the previous voting scandals, at present and in the future there are clear responsibilities placed upon broadcasters (Participation TV regulations) and terminating communication providers (PhonepayPlus 11th code of practice). Both sets of regulation provide clear mechanisms for the refund of consumers. There is no need for BT Retail to incur bad debt in relation to these services other than were there to be the highly unlikely event of a systematic failure in due diligence and self-inflicted bad debt caused by BT Agilemedia (as the supplier of the industry's main terminating platform for mass call voting).

15. DO YOU AGREE THAT A FOUR YEAR DURATION FOR THE PRS BAD DEBT SURCHARGE IS APPROPRIATE?

Cable&Wireless acknowledges the difficulty associated with forecasting bad debt against the backdrop of a turbulent period of historic PRS issues. This is exacerbated by BT's change in accounting practices which prevents an accurate longer-term view of bad debt accounting to be drawn upon. The most obvious solution is the one proposed: to set a four year duration as this is administratively the most efficient time period for review and maintains the tie between the Bad Debt Surcharge and the Retail Uplift, however it would not be desirable for Ofcom to set a four year duration if the amount BT was able to retain was based on a period where BT was proved to be both inefficient and ineffective at securing retail PRS receipts. BT could then takes steps to improve its efficiency, bringing it into line with that of an efficient operator and then over recover for the remainder of the period. Such an approach would award past BT inefficiency. Ofcom must be mindful to set the correct incentives. A four year duration set at the level of an efficient operator would provide certainty to market participants and provide BT with the correct incentives to maintain the efficient collection of PRS receipts.

16. DO YOU AGREE WITH OUR PROPOSED APPROACH FOR THE PRS BAD DEBT SURCHARGE AND IN PARTICULAR THE USE OF BT'S OWN BAD DEBT AND RETAIL REVENUE INFORMATION TO INFORM OUR PROPOSAL?

Cable&Wireless recognises that PRS services attract higher instances of bad debt than other number ranges and services. As a result we recognise the need for the Bad Debt Surcharge. However we can not support the arbitrary increase of this surcharge to a level which will catastrophically impact upon the Service Provider community.

Ofcom's consultation document is vague on how exactly BT has calculated its bad debt figures. There is no clear definition of what actually constitutes PRS bad debt nor is there any granularity into exactly which services have generated the high levels BT claim to be experiencing. We call on Ofcom to complete the independent review of BT's figures before any adjustment is made to the current PRS Bad Debt surcharge. If BT is genuinely experiencing such difficulties with specific elements of PRS then these specific service types need to be understood to help the industry drive the services generating such bad debt levels from the PRS market. However this is not reflective of the experience Cable&Wireless has of the current PRS market. Ofcom's current proposals may indeed drive down BT's PRS bad debt through a reduction in the services able to be offered by Service Providers (particularly those already at the highest price points), but it is equally as likely that the revenue reduction in bad debt from these services will be replaced by Service Providers increasing the tariff on their other services.. We refer Ofcom to the customer submissions contained in the Annexes for direct customer evidence of the impact the current proposals will have on Service Providers.

We have already commented on our expectations in relation to the independent review of BT's AIT procedures. It is important to understand how BT refunds end-users with the revenues that it withholds during AIT, particularly where AIT is being invoked for breaches of the PhonepayPlus code. We expect these refunds, if indeed they are made, to be administered as AIT and not to be recorded as a bad debt which BT is not in fact incurring.

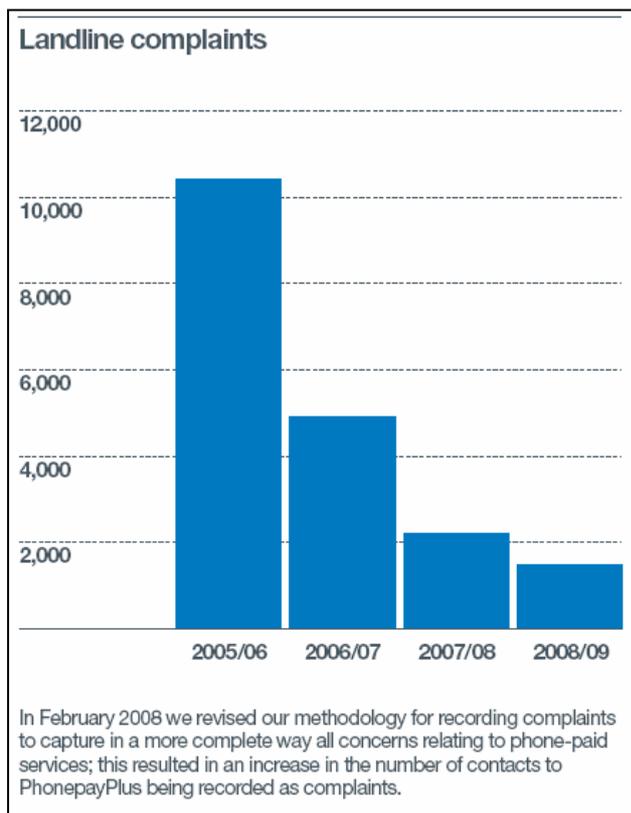
Ofcom must reach a PRS Bad Debt surcharge that is reflective of the current market and not one adversely pushed out of kilter by a non-repeatable spike. We note that when BT last sought to increase the surcharge in 2007 (in the wake of the rogue dialler problems) the proposed increase

was to 5.97%, not the 14.6% now claimed for the same period in the immediate aftermath of the issues nor even the 9.7% currently proposed. We question why this disparity exists and how such sharp increases can be justified both between the current surcharge and what BT was seeking in 2007 and between those of 2007 and the latest bad debt figures in a market of improving compliance. We believe current levels of bad debt to be commensurate with the current Bad Debt Surcharge with the main drivers of this rate being the ability of consumers to pay in much the same way as for any other BT number range.

Cable&Wireless fully supports the use of an independent third party to review the bad debt figures being quoted and we agree that the latest possible set of PRS bad debt and revenue figures should be used to come to an opinion as to the figures' veracity. We note that it is also important to check these figures against the broader context during the review. What is the corresponding level of complaints experienced by PhonepayPlus? Is there evidence of levels of bad debt available from analogous industries to act as a benchmark for BT's figures? Why is the PRS bad debt so much higher than for other call types if BT chases the whole bill for payment?

17. CAN YOU SUPPLY ANY EVIDENCE OR OTHER INSIGHT ABOUT THE INCIDENCE OF BAD DEBT ON PRS CALLS AND IN PARTICULAR WHETHER THE INCIDENCE OF PRS BAD DEBT HAS RISEN SUBSTANTIALLY IN RECENT YEARS?

Cable&Wireless has not been able to supply any firm PRS bad debt figures from our reseller partners. This in itself is telling. If the levels of PRS bad debt were commonly at the level that BT's



figures are suggesting we would expect this data to have been readily available amongst all of our partners. Anecdotal evidence from some customers has suggested that bad debt levels in total amongst our partners are not as high as BT is claiming solely for PRS.

Cable&Wireless refers Ofcom to Statistical evidence from PhonepayPlus which indicates a significant and consistent reduction in the incidence of complaints attributable to PRS landline calls. It stands to reason that the levels of complaints received by PhonepayPlus will correlate to some degree with the level of bad debt experienced by BT Retail for this same category of calls.

Figure 1: PhonepayPlus landline complaints.

Indeed there is an initial correlation. BT pinpoint two reasons for their levels of bad debt: the rogue dialler issues of 2005 / 06 and the Participation TV issues of 2007. The dialler issue saw consumers hit by rogue PC downloads which redirected the consumers' internet connections away from their usual dial up number and to a PRS number. It is no surprise that BT's bad debt figures in

2006 shows a PRS bad debt level much higher than in previous or subsequent years (although as we have already stated we question whether BT was indeed doing all it could to mitigate the situation). However this should represent a short-lived and extraordinary peak in bad debt issues. Dial up issues have been all but eradicated with the migration of consumers to broadband, whilst Participation TV is now subject to much tighter regulation. This period therefore can in no way be regarded as being representative for bad debt forecasting. Figure 2 below delineates the rapid increase in PRS complaints from late 2002 onwards before a dramatic spike in 2005.

The latest PhoneyPayPlus figures shown in Figure 2 demonstrates that not only was the rogue dialler issue a peak for complaints, but also that the level of complaints to PhoneyPayPlus has continued to follow the trend (Fig 1). This is a trend which is continuing. Overall PhoneyPayPlus complaints logged have decreased 50% for 2009 / 2010 during Q1 in comparison to Q1 of 2008 / 2009 (6,974 vs. 3,461). Furthermore PhoneyPayPlus report that: "Every one of the top 15 Service Providers has seen a net reduction in complaints – there was a dramatic decline in April when PhoneyPayPlus began to share complaint-led intelligence with Service Providers regarding services operating on their platform"¹.

The bad debt figures quoted by BT do not show this decline. There has been a drop from the peak of the rogue dialler bad debt, but since then the bad debt level has stagnated around 9%. This is not reflective of the market experience and the aspects particular to BT need to be fully investigated and understood.

BT also identified the well publicised TV phone-in issues of 2007 as a reason for PRS bad debt. On the surface this appears to be a valid line of reasoning. However all of these issues were the subject of investigation by both PhoneyPayPlus and Ofcom. A number were extremely high profile and earned the relevant broadcasters substantial fines. In each case the broadcaster was either directed to refund consumers by PhoneyPayPlus or made such redress themselves. In such situations there should be no reason at all for BT to have incurred any PRS bad debt. The consumers involved were offered the relevant level of consumer protection and were fully

¹ <http://www.phoneypayplus.org.uk/upload/QuarterlyReport-2009-2010-Q1.pdf>

compensated. If BT has indeed double-refunded consumers then this should be seen as a BT Retail commercial decision and can not in any way be attributed to bad debt and certainly shouldn't be paid for the rest of industry.

18. DO YOU AGREE THAT IN THESE CIRCUMSTANCES THAT A ONE-OFF ADJUSTMENT TO THE PRS BAD DEBT SURCHARGE AT THE OUTSET OF THE CONTROL, RATHER THAN PHASING IT IN OVER TIME IS APPROPRIATE?

In order to provide certainty to all market participants and avoid the market price shocks which would have a dramatic detrimental impact on Service Providers and ultimately consumers we would advocate the use of a glide path.

✂

- End -

ICSTIS and Complaints

The number of complaints about premium rate services remains relatively low given the growing number of services available to consumers, the millions of calls made each year and the overall growth of the industry. Where were you when complaints hit?

2006 19,593
complaints

ROGUE DIALLERS
Stringent licensing by ICSTIS sees the end of Internet dialler abuse. The International Astronomical Union demotes Pluto to the status of 'dwarf planet', reducing the number of known major planets in the solar system to eight.



2003 27,501
complaints

CONCORDE ENDS
Concorde makes its last commercial flight, bringing the era of supersonic travel to a close, at least for the time being.



2000 6,067
complaints

Y2K CELEBRATIONS
Millennium celebrations take place throughout the world. 'Y2K' passes without the serious, widespread computer failures and malfunctions that many had predicted.



1996 3,582
complaints

DOLLY THE SHEEP
Dolly the sheep, the first mammal to be successfully cloned from an adult cell, is born at the Roslin Institute in Midlothian, Scotland.



1993 5,401
complaints

SPAMMING IS BORN
A bug in a programme written by Richard Depew sends an article to 200 newsgroups simultaneously. The term 'spamming' is coined by Joel Furr to describe the incident.



1989 1,633
complaints

BERLIN WALL COMES DOWN
The world looks on as Germany celebrates the unification of East and West.



1986 0
complaints

ICSTIS LAUNCHES
ICSTIS was established as the independent regulatory body for the premium rate industry. The 'Hand of God' helps Argentina win the World Cup.



1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004/5 2005/6

20 1986-2006
years of regulating
premium rate services