



Conditions regulating Sexual Entertainment Services

This document seeks comments on proposals for the future regulation of Sexual Entertainment Services with particular reference to those services currently using '08' numbers

Consultation

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Section 1

Summary

- 1.1 Ofcom (“the Office of Communications”) exists to further the interests of citizens and consumers through a regulatory regime which, where appropriate, encourages competition. Effective competition delivers choice and lower prices to consumers as well as opportunities for new services and providers. However, consumers may need protection from inappropriate behaviour by certain providers that may undermine confidence in the market as well as causing consumer detriment.
- 1.2 One example of such protection is the regulation of Premium Rate Services (“PRS”). PRS are defined in section 120 of the Communications Act 2003 (“the Act”). In broad terms, PRS offer consumers some form of content, product or service accessed via fixed or mobile telephones and charged to the user’s telephone bill. While the majority of PRS providers promote and provide PRS responsibly, a minority do not. The activities of that minority can harm consumers; for example, by causing them to unknowingly incur charges or run up high phone bills, or by providing children with access to content that is inappropriate for them. Some PRS providers even use PRS to deliberately mislead or defraud. PRS regulation is designed to offer consumers a degree of protection from such harm.
- 1.3 The statutory provisions for the regulation of PRS are set out in sections 120 to 124 of the Act. These provisions provide Ofcom with the power to set conditions (“the PRS Condition”) that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS. Briefly, where Ofcom has approved a code for regulating the provision and contents of PRS, the PRS Condition can only require the persons to whom it applies to comply with directions given in accordance with that code by that code’s enforcement authority.
- 1.4 PRS are currently regulated primarily by the Independent Committee for the Supervision of Standards in the Telephone Information Services (ICSTIS) under a code which Ofcom has approved (“the Approved Code”). The currently applicable version of the Code was approved for the purposes of sections 120 and 121 of the Act on 29 December 2003, and approval was also given for an emergency code amendment on 4 August 2005.
- 1.5 The PRS Condition requires ‘Communications Providers’ (as defined in the PRS Condition) to comply with directions given by ICSTIS under the Approved Code. ‘Communications Provider’ is defined within the PRS Condition in such a way as to restrict that expression to persons involved in the provision of a subset of PRS known as ‘Controlled Premium Rate Services’ (“CPRS”).
- 1.6 A failure by a Communications Provider to comply with an ICSTIS direction will normally amount to a contravention of the PRS Condition and may lead to ICSTIS referring the matter to Ofcom. Ofcom may then take enforcement action under the relevant procedures set out in the Act.
- 1.7 The PRS Condition has undergone a number of modifications since its introduction in order to address a number of concerns and possible scams that have emerged. The currently applicable version of the PRS Condition was published on 17 October 2006 in a statement entitled “*Conditions regulating Premium Rate Services*”¹ This

¹ <http://www.ofcom.org.uk/consult/condocs/prsconditions2/statement/>

statement notified a modification to the PRS Condition to clarify its applicability to providers of premium rate services provided over mobile phones and similar communications devices.

- 1.8 Ofcom is now proposing a further modification to the PRS Condition to ensure that in the future all such premium rate services collectively known as sexual entertainment services ('SES') will be regulated by the PRS Condition regardless of the price charged for the service. This is to address concerns over the fact that an increasing number of such services are currently being offered for a price below 10 pence per minute ('ppm') and thus falling outside the scope of the PRS Condition.
- 1.9 Additionally, Ofcom is proposing to amend the National Telephone Numbering Plan ('the Plan')² and the Annex to General Condition 17 to ensure that SES offered on '08' numbers will migrate to a new '098' number range.
- 1.10 Both proposals aim to implement previous decisions made by Ofcom. In its statement "*NTS: A Way Forward*" issued on 19 April 2006 (the 'April NTS statement')³ Ofcom announced its decision to extend the definition of Controlled Premium Rate Services ('CPRS') to include all SES regardless of call price. To facilitate selective call barring in relation to SES, Ofcom further gave notice of its intention to amend the Plan to clarify that SES should only be provided on the '0908' and '0909' ranges that were designated for SES services, at the time.
- 1.11 On 10 August 2006 Ofcom published a statement entitled "*Supplying numbers for '09' premium rate services and codes to facilitate mobile number portability*" (the 'August Numbering statement')⁴. This document introduced a new range (the '098' range) to be used for SES in future. The '098' range was made available on the date of publication of the statement and at the same time the existing '0908' and '0909' ranges were closed to new number allocations. Given this change, Ofcom now proposes to modify the Plan to clarify that new SES may only be provided on the designated '098' range. For the avoidance of doubt, '0908' and '0909' numbers already allocated for SES may continue to be used for that purpose for the present time (see further paragraph 1.15 below).
- 1.12 This document seeks comments on (a) the proposed modification of the PRS Condition to extend the definition of CPRS to all SES regardless of price and (b) the proposed modification of the Plan to facilitate migration of SES currently operating on '08' NTS numbers to the new '098' number range. This also requires an amendment of part 5 of the Annex to General Condition 17. Ofcom has considered the impact of this requirement on SES service providers and further proposes that a period of six months should be allowed, from the date of publication of the final statement following this consultation, for the migration to be completed.
- 1.13 In setting out its proposals in this document, Ofcom has considered, and acted in accordance with, its principal duty in section 3 as well as the community requirements in section 4 of the Act. Ofcom has also considered the test set out in sections 120(5) and 47(2) of the Act to modify the PRS Condition, the test set out in section 60(2) of the Act to modify the Plan and the test set out in section 47(2) to modify the Annex of General Condition 17.

² <http://www.ofcom.org.uk/telecoms/ioi/numbers/100806.pdf>

³ http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

⁴ http://www.ofcom.org.uk/consult/condocs/supply_numbers/statement/

Related Work

- 1.14 As part of the concluding stages of Ofcom's ongoing *Numbering Review* a further consultation is planned for early 2007 on the future structure of the '09' number range in general which will include a consultation proposing migration of services currently operating on 090 and 091 numbers to newly designated ranges. Such a proposal might include the requirement for SES operating on '0908' and '0909' numbers to migrate to the new '098' range.
- 1.15 For the avoidance of doubt, this consultation does not seek to address migration of services from 0908 and 0909 to the new 098 range. Those services currently using 0908 and 0909 numbers may continue to use them at present.

Consultation

- 1.16 Ofcom is inviting written views and comments by 5pm on Thursday 14 December 2006, on the proposed changes to the PRS Condition, the proposed modification to the Plan and consequential changes to part 5 of the Annex to General Condition 17 and the proposed migration timescale which are set out in Annex 6, 7 and 8 to this document.
- 1.17 Details of how to respond on each of these issues can be found in Annex 1.
- 1.18 Ofcom will give careful consideration to all comments received during the consultation period, and in light of the comments received, may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom aims to publish the Notification and Explanatory Statement early in 2007.

Effective date

- 1.19 Subject to the outcome of the consultation, Ofcom proposes that the amendments to the PRS Condition will take effect from the date of publication of the Notification and Explanatory Statement whilst the amendments to the Plan and the Annex to General Condition 17 will take effect 6 months after the date of publication of the Notification and Explanatory Statement in order to allow SES providers an adequate period to complete the migration of services from '08' to new '098' numbers.

Section 2

Introduction and background

What are Premium Rate Services

- 2.1 Premium Rate Services ('PRS') offer some form of content, product or service that are provided via fixed and mobile telecoms services and paid for via call or other telephony charges. These may be accessed as conventional voice services or using SMS text, telephone line, PC (e-mail, internet, bulletin board), mobile phone or interactive digital TV. Services include TV voting lines, competitions, scratchcards, sexual entertainment, chatlines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and interactive TV games.
- 2.2 In the UK PRS are typically prefixed by '09'. Directory enquiry services (on 118xxx) also fall within the definition of premium rate services for the purposes of the Act.
- 2.3 PRS vary in cost typically between 10 pence per minute or per call up to £1.50 per minute or per call (for BT customers). In most cases the bulk of the revenue from calls to such services goes to service providers ('SPs') who are responsible for the content, product or services provided or who act as resellers or aggregators on behalf of a number of such providers. The SPs are responsible for compliance with the bulk of the obligations imposed by the ICSTIS Code. The remainder of the revenue is shared by: the consumer's 'originating' telephone company (the Originating Communications Provider ('OCP')), which receives a small fee for 'origination' of the phone call; and the telephone company that contracts with the SP and 'terminates' the call on behalf of the SP through the provision of network facilities ('the Terminating Communications Provider ('TCP')).
- 2.4 PRS are defined in section 120(7) of the Act which provides that a service is a premium rate service, if:
 - a) it is a service falling within subsection (8)⁵;
 - b) there is a charge for the provision of the service;
 - c) the charge is required to be paid to a person providing an electronic communications service by means of which the service in question is provided; and
 - d) that charge is imposed in the form of a charge made by that person for the use of the electronic communications service.

⁵ A service falls within this section if its provision consists in:

- (a) the provision of the contents of communications transmitted by means of an electronic communications network; or
- (b) allowing the user of an electronic communications service to make use, by the making of a transmission by means of that service, of a facility made available to users of the electronic communications service.

The regulatory framework and PRS

- 2.5 A new regulatory framework for electronic communications networks and services entered into force on 25 July 2003. The framework is designed to create harmonised regulation across Europe, and is aimed at reducing entry barriers and fostering prospects for effective competition to the benefit of consumers.
- 2.6 Under the new regulatory framework, Ofcom must have regard to its principal duty set out in section 3 and, in particular 3(1) of the Act, which states that *“it shall be the principal duty of Ofcom, in carrying out their functions –*
- a) to further the interests of citizens in relation to communications matters; and*
- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.”*
- 2.7 In addition, it is the duty of Ofcom to act in accordance with the six Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive.)⁶.
- 2.8 The relevant statutory provisions governing the regulation of PRS are set out under sections 120 to 124 of the Act. These provisions provide Ofcom with the power to set conditions (“the PRS Condition”) that bind the persons to whom they are applied, for the purpose of regulating the provision, content, promotion and marketing of PRS. Where Ofcom has approved a code which has been made by any person for regulating the provision and contents of PRS and the facilities made available in the provision of such services, the PRS Condition can only require the persons to whom it applies to comply with directions given in accordance with the approved code by that code’s enforcement authority. Any condition set under section 120 must comply with section 47 of the Act, i.e. it must be objectively justifiable, not unduly discriminatory, proportionate and transparent. It must also comply with the notification and consultation requirements in section 48 of the Act.

The role of ICSTIS and Ofcom in the regulation of PRS

- 2.9 The current regulatory arrangements for PRS follow a self- and co-regulatory approach. The primary role of consumer protection with regard to PRS falls to ICSTIS⁷, the industry-funded regulatory body for premium rate charge telecommunications services. ICSTIS regulates the content and promotion of PRS through a Code of Practice which imposes certain specified obligations on both ‘service providers’ and ‘network operators’ (as those parties are defined therein).
- 2.10 The current version of the Code of Practice was approved for the purposes of sections 120 and 121 of the Act on 29 December 2003 (the “Approved Code”) and approval was also given for an emergency code amendment on 4 August 2005
- 2.11 The current edition of the Approved Code is available from the ICSTIS website⁸.
- 2.12 ICSTIS issued a consultation document on 28 July 2005 seeking comments on a draft new version of its Code of Practice. In conducting its review ICSTIS examined

⁶ Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communications networks and services.

⁷ Independent Committee for the Supervision of Standards of the Telephone Information Services.

⁸ http://www.icstis.org.uk/pdfs/Code_Practice_10_Amended.pdf

all areas of the current Approved Code (ICSTIS Code, 10th Edition, as amended) and also considered the recommendations put forward by Ofcom in its report to the Department of Trade and Industry ('DTI'), *the Regulation of Premium Rate Services*, published in December 2004 ('Ofcom's report').⁹ ICSTIS subsequently published a statement setting out a further version of its draft Code which had been amended in light of comments received.¹⁰ That draft was also submitted to Ofcom with a request that Ofcom approve it under sections 120 and 121 of the Act so that it would replace the current edition of the Approved Code.

- 2.13 Ofcom then published a consultation document on whether Ofcom should approve that new version of the Code (11th Edition).¹¹ The consultation period closed on 10 July 2006 and Ofcom is currently in the process of considering the responses received.
- 2.14 Under the current version of the Approved Code, ICSTIS has a range of sanctions it can impose on 'service providers' in respect of breaches of the Approved Code. These include requiring the giving of assurances about future behaviour, the imposition of financial penalties, barring access to services and prohibiting a named individual from operating services for a set period.
- 2.15 The obligations imposed on 'network operators' are more limited. Broadly speaking, those obligations require network operators to assist ICSTIS, for example by complying with its directions to provide information about particular services or service providers, withholding revenues from particular service providers, or suspending the provision of particular services.
- 2.16 As noted above, Ofcom has the power under section 120 of the Act to set conditions for the purpose of regulating the provision, content, promotion and marketing of PRS that bind the persons to whom they are applied. The current PRS Condition, which was published on 17 October 2006, binds each and every person falling within the definition of 'Communications Provider' in the PRS Condition, to comply with:
- "(a) directions given in accordance with an Approved Code by the Enforcement Authority¹² and for the purposes of enforcing the provisions of the Approved Code; and*
- (b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act."*
- 2.17 The definition of 'Communications Provider' in the PRS Condition is confined to persons involved in the provision of a subset of PRS nominated within the Condition as 'Controlled Premium Rate Services' ("CPRS"). CPRS are defined in the PRS Condition to include a PRS only where: (i) the charge or rate for the call is more than 10 pence per minute; (ii) the service is a Chatline Service; or (iii) Internet Dialler Software is operated. Unless a service falls within the definition of PRS in section

⁹ ICSTIS' consultation document is available on the ICSTIS website at:

<http://www.icstis.org.uk/icstis2002/pdf/A%20Statement%20on%20the%20ECA%20Condoc%20-%20FINAL.pdf>

¹⁰ ICSTIS' statement is available on the ICSTIS website at:

http://www.icstis.org.uk/pdfs_code/11thCode_final_statement.pdf

¹¹ Ofcom's consultation document is available on the Ofcom website at:

<http://www.ofcom.org.uk/consult/condocs/icstiscode/icstiscode.pdf>

¹² Currently ICSTIS.

120 of the Act, however, it cannot constitute a CPRS, irrespective of the cost of calling it.

- 2.18 A failure by a Communications Provider to comply with an ICSTIS direction will normally amount to a contravention of the PRS Condition and may lead to ICSTIS referring the matter to Ofcom. Ofcom may then take enforcement action under the relevant procedures set out in the Act. The PRS Condition is sometimes referred to as Ofcom's 'backstop power' because that power performs the function of supporting ICSTIS' effectiveness in circumstances where a party falling within the definition of 'Communications Provider' in that condition is failing to comply with directions that ICSTIS has given to that party.

The NTS regime

What are NTS?

- 2.19 Number Translation Service ('NTS') calls are calls to numbers identified in the National Telephone Numbering Plan ('the Plan') as Special Service numbers (broadly, numbers that start with '08' or '09'). In addition, NTS includes calls to the legacy '0500' Freephone numbers, which, whilst still in use, are not listed in the Plan as they are no longer available for new allocations.
- 2.20 NTS numbers are examples of non-geographic numbers in that the number dialled does not relate to a specific geographic location, but instead relates to a particular service. At a technical level, the NTS number dialled by a caller is 'translated' by the network to a geographic number to deliver the call to its destination.
- 2.21 Services offered using '08' NTS numbers are similar to those using the '09' number range except that prices range from free to caller up to a maximum of 10ppm (from a BT landline). Types of services include information services, some technical helplines, access to telephone banking, sales and customer service lines and dial-up pay-as-you-go internet services.
- 2.22 Because of the lower prices charged for '08' NTS calls generally, the scope for consumer detriment from making long calls and from fraudulent activity is generally considered less of an issue. However, there is still potential for consumers to accrue high phone bills over a billing cycle where there may be frequent or long-duration use of lower priced services.

The regulatory framework and NTS

- 2.23 Most services operating on the '08' number range are not captured by the PRS Condition as the regulatory framework of the PRS Condition only applies to services the charge of which exceeds 10 pence per minute or per call from a BT landline, or where the service is a Chatline or is Internet Dialler Software operated.
- 2.24 Ofcom recently completed a review of the regulatory framework for NTS, and published a statement, Number Translation Services: A Way Forward, on 19 April 2006. That document sought to address certain policy issues associated with the NTS regime as it applies to '08' number ranges rather than the '09' range, and confirmed a number of changes to the regulatory regime for '08' numbers. It is available on the Ofcom website at:

http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/

- 2.25 Key amongst the changes set out in that document, is that '0871' numbers will be brought within the current regulatory framework of the PRS Condition which would, in effect, mean that services using the '0871' number range would have similar obligations as those using '09' numbers. This will require ICSTIS' to extend the scope of its regulation to '0871' numbers. To this end on 31 July 2006 ICSTIS published a pre-consultation paper entitled "*ICSTIS' regulation of 0871 (NTS) services: A pre-consultation paper seeking input into ICSTIS' implementation of Ofcom's objectives for regulation over 0871 services*"¹³. This pre-consultation closed on 29 September 2006.
- 2.26 The April NTS Statement announced Ofcom's decision that SES currently operating on '08' numbers should be brought within the regulatory framework of the PRS Condition regardless of the call cost, and that the Plan should be amended to clarify that SES should only be provided on the '0908' and '0909' ranges.
- 2.27 On 10 August 2006 Ofcom also published a statement as part of the ongoing Numbering Framework Review. This statement entitled "*Supplying numbers for '09' premium rate services and codes to facilitate mobile number portability*" ('the August Numbering Statement') was in response to the fact that the existing '0908' and '0909' number ranges are nearing exhaustion. This would be further exacerbated by any requirement for SES operating on '08' to migrate to '0908' or '0909'. Consequently following its consultation on the issue in May 2006¹⁴, Ofcom opened the '098' range for SES with immediate effect and no further allocations will be made from '0908' and '0909'.
- 2.28 This means that the extension of CPRS to SES on '08' numbers will entail migration to '098' rather than '0908' and '0909' numbers as indicated in the NTS Statement. Ofcom is aware that many TCPs and SPs will already have been allocated numbers in the '0908' and '0909' ranges and may consider migrating services to their existing numbers rather than applying for new '098' numbers. Whilst providers are entitled to do this Ofcom advises providers to give regard to the possibility that – following the planned consultation on the future arrangements for the entire '09' range – the requirement might arise that all '0908/09' SES will have to migrate to '098'. This would result in some services having to migrate to new numbers on two occasions in a relatively short period.

¹³ http://www.icstis.org.uk/pdfs_consult/0871preconsultation.pdf

¹⁴ http://www.ofcom.org.uk/consult/condocs/supply_numbers/

Section 3

The Issue and Ofcom's proposals

SES and '08' numbers

What are SES?

3.1 Sexual entertainment services ('SES') in the context of this consultation are services provided for an adult audience and which are PRS as defined in the Act. They usually consist of calls to recordings with a sexual content or calls to live services where the caller talks to the 'entertainer' in person. They can also include calls to chatlines where the subject matter is sexually orientated although chatlines are already defined as CPRS.

3.2 The Plan, under "Definitions and Interpretations" currently defines SES as follows:

“ **'Sexual Entertainment Service'** means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;”

3.3 Section 6.7 of the ICSTIS Code further defines SES as follows:

“SEXUAL ENTERTAINMENT SERVICES

6.7.1 Sexual entertainment services are services of a clearly sexual nature or any services for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature.

6.7.2 Services which are pay for product services, where the product is of a clearly sexual nature, are sexual entertainment services. Such services must operate on the designated code for sexual entertainment services (which, at the date of publication of this Code, is 0909).”

3.4 Some sexual entertainment services are also available on numbers other than '08' and '09', including '01' and '02' geographic numbers, where they are paid for by means other than through the price of the call, usually by credit card. Because of this, at the present time, these services are not classed as PRS as defined in the Act and are therefore outside of the scope of this consultation. Ofcom's forthcoming review of the 09 range, referred to in paragraph 1.14, plans to consider what should happen to these services in future.

The Issue

3.5 In paragraph 5.12 of its April NTS Statement, Ofcom decided that the Plan should be amended to clarify that sexual entertainment services should only be provided on the designated '09' number ranges (the '0908' and '0909' number ranges at the time of the statement) and that SES shall be captured by the PRS Condition.

- 3.6 Subsequently, in its August Numbering Statement (paragraph 3.47), Ofcom also decided to designate the new '098' number range in the Plan to SES and to close down the '0908/0909' ranges for further allocations in this respect.
- 3.7 The key issues for these decisions can be summarised as follows:
- (i) SES charged at less than 10ppm are not currently included within the definition of CPRS;
 - (ii) provision of SES on 08 numbers undermines the informative nature of the Plan which now designates the 098 range for sexual entertainment services
 - (iii) because SES using '08' numbers operate on non-specific number ranges throughout the '08' range it is impossible for consumers to apply selective call barring without losing access to other '08' services. This means that SES on '08' numbers may be more easily accessible by minors and other vulnerable consumers;
- 3.8 This consultation now seeks comments on how best to implement the policy decisions mentioned above.
- 3.9 Ofcom considers that issue (i) can be addressed by including SES that are PRS as defined in the Act, regardless of price, within the definition of CPRS. Additionally issues (ii) and (iii) can be addressed by modifying the Plan and amending part 5 of the Annex to General Condition 17 to ensure migration of SES operating on the '08' range to designated '09' numbers and to clarify that communications providers requiring new '09' numbers will only be allocated numbers in the '098' range.

The Solution

The PRS Condition

- 3.10 Ofcom considers that the most effective and efficient means of achieving the regulation of SES is to modify the PRS condition to change the definition of CPRS to include SES regardless of the price of calls to those services. The current definition states:

“Controlled Premium Rate Service” means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:

(i) the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute; or

(ii) the service is a Chatline Service; or

(iii) is Internet Dialler Software operated;”

- 3.11 This needs to be modified by the addition of a clause which states:

“(iv) the service is a Sexual Entertainment Service;”

where a Sexual Entertainment Service is defined as “an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is

of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature”.

- 3.12 Since a Controlled Premium Rate Service by definition only includes PRS as defined in the Act, only those SES that are also PRS would be captured by this amendment. For the reasons stated in paragraph 3.4 above sexual entertainment services that are charged for separately from the telephone bill would not fall within the scope of the proposed amendment.

The Plan and part 5 of the Annex to General Condition 17

- 3.13 The designation in the Plan, at Section A1 of Part A, in regard to ‘090’ and ‘091’ numbers currently includes, in brackets at the end of the designation, the words “(including 0908 and 0909 for Sexual Entertainment Services at a Premium Rate)”. These numbers are, however, no longer available for issue for new services,

- 3.14 Ofcom proposes to remove the entry relating to 0908 and 0909 from Section A1 of the Plan and to add it to the designation in part 5 of the Annex to General Condition 17 for “*Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated*”. This change will clarify that 0908 and 0909 numbers are no longer available for allocation to communications providers as set out in paragraph 3.47 of the August Numbering Statement.

- 3.15 Furthermore, in the Plan numbers beginning ‘098’ are currently designated:

“Sexual Entertainment Services at a Premium Rate, that are charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b) fixed fee calls costing over 10p, up to and including £1.50 including VAT”

- 3.16 Ofcom considers that this wording should be amended to remove any ambiguity which would lead SES providers to believe that calls to their services must cost more than 10ppm or per call to be able to use ‘098’ numbers. Ofcom therefore suggests that the entry in the Plan should be amended to read:

“Sexual Entertainment Services, that are charged at rates for Customers of BT which are either a) up to and including £1.50 per minute including VAT, or b) fixed fee calls costing up to and including £1.50 including VAT”

- 3.17 Additionally, Ofcom proposes to amend the definition of Sexual Entertainment Services in the Plan to underline that sexual entertainment services provided on geographic numbers and paid for separately, e.g. by credit cards, do not have to migrate to the ‘098’ number range at the present time. Ofcom therefore suggests that the definition of SES in the Plan should be amended to read:

“‘Sexual Entertainment Service’ means **a Premium Rate Service which is** an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly , or implies, that the service is of a sexual nature;”

The term ‘Premium Rate Service’ shall be ascribed the same meaning as it has in section 120 (7) of the Act by adding a definition into the Plan which reads:

“Premium Rate Service’ shall have the meaning ascribed to it by section 120(7) of the Act;”

Timescale for migration from ‘08’ to ‘098’

- 3.18 Ofcom has considered what SES providers will need to do to migrate their services from their existing ‘08’ numbers to new numbers in the ‘098’ range
- 3.19 Details of this analysis can be found in the Impact Assessment at Annex 5.
- 3.20 Taking all the necessary steps in succession, Ofcom is of the view that most services should be able to migrate within a maximum timescale of approximately sixteen weeks (four months). Ofcom, proposes to include a safety margin of two months to allow for any unforeseen slippages in the above processes..
- 3.21 Ofcom is therefore proposing a migration period of six months by which time all SES operating on ‘08’ numbers must migrate to new ‘098’ numbers. After this time Ofcom and ICSTIS will consider taking enforcement action against SES providers who continue to use ‘08’ numbers.

Question: Do Ofcom’s proposals adequately implement the policy decision set out in the April NTS Statement to extend the definition of CPRS to include all SES that are PRS and to ensure migration of SES operating on ‘08’ numbers to appropriate ‘09’ numbers?

Section 4

Consultation on the notification of modifications to the PRS Condition and the Plan

The purpose of this consultation

- 4.1 The relevant procedures for setting, modifying or revoking the PRS Condition or General Conditions are set out in section 48 of the Act. Similarly, section 60 of the Act sets out the necessary procedure to modify the Plan. Under section 48 as well as under section 60 of the Act, Ofcom is required to publish notifications of the proposed modifications ('the 'Notifications'), and to consult for a period of not less than one month after the day of publication of the Notifications.
- 4.2 The Notifications and proposed modifications are attached at Annexes 6, 7 and 8.
- 4.3 Ofcom is inviting written views and comments by 5pm on 14 December 2006, on the Notifications and proposed modifications to the PRS Condition, the National Telephone Numbering Plan and to part 5 of the Annex to General Condition 17.
- 4.4 Details of how to respond on each of these issues can be found at Annex 1.
- 4.5 Ofcom will give careful consideration to all comments received during the consultation period and in light of the comments received may give effect to the proposals set out in this document, with or without modification, by publication of a Notification and explanatory statement. Ofcom aims to publish this document early in 2007.

Impact Assessment

- 4.6 The detailed IA is set out in Annex 5. You should send any comments on the IA to us by the closing date for this consultation (14 December 2006). Ofcom will give careful consideration to all comments received during the consultation period before deciding whether to implement our proposals.

Tests set out under the Communications Act 2003

- 4.7 When modifying conditions or the Plan, Ofcom is required to meet various tests set out in the Act. These tests, and Ofcom's assessment of how these are met in connection with the proposed modification to the PRS Condition, the Plan and the Annex to General Condition 17, are set out below.

Section 3 – Ofcom's general duties

- 4.8 Section 3(1) of the Act sets out the principal duty of Ofcom. Ofcom is required by this section to carry out its functions in line with this duty. That duty is:
 - a) to further the interests of citizens in relation to communications matters; and

- b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 4.9 Ofcom considers that the proposals to extend the PRS regulatory regime to ensure SES regardless of price are regulated under the PRS Condition and modifying the Plan (and the Annex of General Condition 17 respectively) to clarify that SES should only be provided on the designated '09' ranges are in line with section 3 of the Act.
- 4.10 The proposals merely implement previous policy decisions that have been made in line with section 3 of the Act.
- 4.11 The proposals seek to extend the consumer protection provided by PRS regulation to SES that are currently not subject to that regulation. In addition, by requiring these services to use the designated ranges, citizens will have better access to call barring facilities. In both these measures, Ofcom's primary purpose is to ensure that vulnerable consumers, particularly minors are protected.
- 4.12 Ofcom has also considered when carrying out its functions, amongst other things, the requirements in section 3 (2) of the Act to secure the availability throughout the UK of a wide range of electronic communications services, and section 3 (4) of the Act, namely that in performing its duties Ofcom must also have regard to such of the following as appears to be relevant in the circumstances, in particular:
- (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;
 - (k) the opinions of consumers in relevant markets and of members of the public generally.
- 4.13 Ofcom considers that the proposals set out in this document are in line with the above duties and that, in particular, and as set out above, extending PRS regulation to include all SES regardless of price would be the most effective means of implementing the policy decision given in the April NTS Statement i.e. to require SES on '08' numbers' to move to designated '09' numbers.
- 4.14 In addition because (as discussed in Annex 5) the costs of migrating services to the designated '09' ranges, for both SES providers and consumers, are low market exit by SES providers is thought unlikely and, as a consequence, competition in service provision and service availability will not be harmed.

Section 4 – European Community requirements for regulation

- 4.15 Section 4 of the Act sets out the Community duties on Ofcom which flow from Article 8 of the Framework Directive. Ofcom considers that its proposals outlined above promote the interests of all persons who are citizens of the European Union by ensuring that consumers are adequately protected from the potential of consumer harm arising from SES operating outside the PRS regulatory regime and on number ranges where selective call barring is not easily achievable without precluding access to other services. In Ofcom's view, as already stated, this would build consumer confidence and satisfaction in the '09' and '08' sectors, which, in turn, would be beneficial to these sectors.

Section 47 – Test for setting or modifying conditions

- 4.16 As set out under section 47(1) of the Act, when modifying a condition, Ofcom must be satisfied that the test set out under section 47(2) has been met. The test is that the modification of the condition is:
- a) objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.

Section 60 – Test for modifying the Plan

- 4.17 As set out under section 56 (2) of the Act when revising the Plan, Ofcom must do so in compliance with the requirements set out in section 60 of the Act. Section 60 of the Act provides for the modification of documents referred to in the Numbering Conditions (which include the Plan) and sets out the test that has to be passed in order to modify the Plan. The test is that the revision or modification of the Plan is:
- a) objectively justifiable in relation to the matters to which it relates;
 - b) not unduly discriminatory against particular persons or against a particular description of persons;
 - c) proportionate to what it is intended to achieve; and
 - d) transparent in relation to what it is intended to achieve.

Ofcom’s general duty as to telephone numbering functions

- 4.18 Ofcom has a general duty under section 63(1) of the Act in carrying out its numbering functions
- “a) to secure that what appears to them to be the best use is made of the numbers that are appropriate for use as the telephone numbers, and
- b) to encourage efficiency and innovation for that purpose.”

Modifying the PRS Condition

- 4.19 Ofcom considers that the proposed wording to extend PRS regulation to all SES regardless of price is objectively justifiable in order to further the interests of consumers, in particular of more vulnerable groups, such as children, as set out in paragraph 4.189 of the April NTS Statement.
- 4.20 Ofcom considers that the proposal to extend the PRS regulatory regime to SES regardless of price is not unduly discriminatory because the proposed wording does not benefit particular undertakings, and will be applied uniformly to all TCP’s and SPs.

- 4.21 Ofcom considers that the proposal to extend PRS regulation to SES regardless of price is proportionate on the grounds that the proposed wording introduces the minimum necessary additional regulation in order to achieve the desired objectives and there will be no additional burden on any other services.
- 4.22 Ofcom considers that the proposal to extend PRS regulation to SES regardless of price is transparent insofar as the nature and obligations are clearly set out in the April NTS Statement and this document which is being consulted upon.
- 4.23 Accordingly, Ofcom is today inviting written views and comments on the Notification and proposed modifications to the PRS Condition under sections 48(2) and 120(5) of the Act.

Modifying the Plan and the Annex to General Condition 17

- 4.24 Ofcom considers that the proposal to modify the Plan and the Annex to General Condition 17 in regard to the designations of 090 and 091 numbers and of 098 numbers respectively meets the tests set out in sections 60(2) and 47(2) of the Act being:
- **objectively justifiable**, in that children can less readily access SES due to the increased ability to use call-barring facilities (as set out in paragraph 4.191 of the April NTS Statement) and in that it removes any ambiguity that 0908 and 0909 numbers may still be available for allocation following Ofcom's decision that 0908 and 0909 numbers should no longer be available for allocation, as set out in paragraph 3.47 of the August Numbering Statement.
 - **not unduly discriminatory** because the proposed modification does not benefit particular undertakings, and will be applied uniformly to all TCP's and SPs.
 - **proportionate** on the grounds that the proposals introduce the minimum necessary additional regulation in order to achieve the desired objectives and there will be no additional burden on any other services.
 - **transparent** insofar as the nature and obligations are clearly set out in the April NTS Statement, the August Numbering Statement and this document which is being consulted upon.
- 4.25 Ofcom further considers that it is fulfilling its general duty as to telephone number functions as set out in section 63(1) of the Act in making proposals by:
- **securing the best use of appropriate numbers**, in that the proposed modifications ensure that SES services can be provided in a way that increases transparency and provides a clear service identity (as set out in the April NTS Statement and its August Numbering Statement); and
 - **encouraging efficiency and innovation**, in that the proposed modifications help to ensure that sufficient and appropriate numbering resources are available to meet SES providers' demands thereby encouraging innovation.
- 4.26 Accordingly Ofcom is today inviting written views and comments on the modification to provisions of the Plan under sections 48 (3) and 60(3) of the Act.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 14 December 2006**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at http://www.ofcom.org.uk/consult/condocs/entertainment_services/howtorespond/form, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email geoff.brighton@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Geoff Brighton
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4109
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Geoff Brighton on 020 7783 4175

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response coversheet that this is acceptable).

- A1.9 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex so that non-confidential parts may be published along with the respondent's identity.
- A1.10 Ofcom reserves its power to disclose any information it receives where this is required to facilitate the carrying out of its statutory functions.
- A1.11 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use in order to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.12 Following the end of the consultation period, Ofcom intends to publish a statement early in 2007.
- A1.13 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.14 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.15 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.16 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash
Ofcom
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest. However, Ofcom has chosen a shorter period of 5 weeks because this is not a consultation on a change in policy. The policy decision was taken as part of the overall NTS Review and detailed in the April 2006 NTS Statement. This consultation seeks stakeholders views only on proposals for the procedures necessary to implement the decision.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed coversheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your coversheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation question

Question: Do Ofcom's proposals adequately implement the policy decision set out in the April NTS Statement to extend the definition of CPRS to include all SES that are PRS and to ensure migration of SES operating on '08' numbers to appropriate '09' numbers?

Annex 5

Impact Assessment

Introduction

- A5.1 An impact assessment in relation to the decision to extend the PRS Condition to all SES and the required move to the '0908/0909' range can be found in Section 6 of Ofcom's consultation *NTS: a way forward* of 28 September 2005 (the September 2005 NTS Consultation)¹⁵.
- A5.2 In this section Ofcom assesses the impact of the requirement to migrate SES of the '08' number range to '098' (unless such services have already been allocated '0908/0909' numbers – see A.5.14).
- A5.3 This section represents an impact assessment, as defined in section 7 of the Communications Act 2003 (the Act). You should send any comments on this IA to us by the closing date for this consultation (14 December 2006). Ofcom will give careful consideration to all comments received during the consultation period before deciding whether to implement our proposals.
- A5.4 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making. This is reflected in section 7 of the Act, which means that generally we have to carry out impact assessments where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. However, as a matter of policy Ofcom is committed to carrying out and publishing impact assessments in relation to the great majority of our policy decisions. For further information about our approach to impact assessments, see the guidelines, Better policy-making: Ofcom's approach to impact assessment, which are on our website:
http://www.ofcom.org.uk/consult/policy_making/guidelines.pdf

Rationale for Intervention

- A5.5 The decision to extend the definition of CPRS to include all SES regardless of price and to require services on '08' to move to designated '09' numbers was made in the April NTS Statement dated 19 April 2006. Ofcom is not seeking to review that decision here but merely to consult on the proposals for implementing it.
- A5.6 This impact assessment seeks to assess the relative merits of the different options for implementing the proposals detailed in Section 3. Key factors in this assessment are also the timescales SES providers should be allowed to move their services from 08 numbers to the 098 range and the costs that SES service providers and consumers may incur.

Ofcom's policy objective

- A5.7 The policy objective of this consultation is to implement the decision made in Ofcom's April NTS Statement to extend the definition of CPRS to include all SES that are PRS, regardless of price, and to require all such SES to cease operating on

¹⁵ http://www.ofcom.org.uk/consult/condocs/nts_forward/

'08' NTS numbers and to migrate to specified '09' numbers in the shortest reasonable time.

Timescale for migration

- A5.8 Ofcom has considered a range of timescales for the migration of SES from '08' numbers to the designated '09' ranges and evaluated the advantages and disadvantages of each. Four separate periods have been considered, namely six weeks, three months, six months and finally longer than six months and these were balanced in terms of what was reasonable to expect SES providers to be able to achieve against how the interests of consumers may best be served.
- A5.9 In practice, Ofcom believes that most SES providers will not start the process before publication of the statement that follows the consultation. Hence the following timescales assume a start date which coincides with publication of the statement.

1. Six weeks

- A5.10 Ofcom considered a period of six weeks as it is the period ICTSIS usually allows for SPs to conform to changes in the ICSTIS Code. Ofcom is also looking to secure the consumer protection objective in the shortest possible time. The SES industry was placed on notice that the requirement to move services away from '08' numbers was first proposed in the September 2005 NTS Consultation, was confirmed in the April NTS Statement and reinforced by the August 2006 Numbering Statement'. SPs could, therefore, initiate the necessary steps to migrate services quickly as soon as the statement following this consultation is published.
- A5.11 Ofcom has noted, however, that the number of responses to the NTS Consultation from SES providers was negligible and it is therefore likely that many may not be aware of the final decision. Ofcom must therefore assume that providers will not initiate the migration process until this consultation is completed.
- A5.12 Ofcom has considered what actions SES providers will need to take. Ofcom's understanding of the industry process and relevant timescales is as follows and Ofcom welcomes comments on this analysis:
- i) The SES provider will need to contact their TCP to request the relevant '098' numbers.
 - ii) If the TCP does not already have the required '098' numbers it will, in turn need to contact Ofcom to request the allocation of the '098' numbers required by the SES. Such '098' numbers have been available since 10 August 2006.
 - iii) Ofcom will provide the new numbers within the statutory time of three weeks.
 - iv) Once allocated the relevant '098' numbers the TCP will then need to notify BT to request that the new numbers are opened across BT's network. This is subject to a contractual timescale of eight weeks, BT will also forward the request to other OCPs to request that the numbers are 'opened' on their networks. These other OCPs generally have no contractual obligations in regard to opening new numbers on their networks and some might need some additional time to complete the necessary work.

- v) Once BT has confirmed that the numbers are ready for use the TCP will advise the SES provider accordingly who in turn will initiate the process to change relevant advertisements. Ofcom considers this is unlikely to involve media such as business cards, letter headings, vehicle fleet advertising etc. and will most likely be limited to short term media such as television adverts, newspapers and magazines and periodicals with weekly, monthly, and only occasionally longer circulation periods. Lead times for changing advertising copy are normally limited to the notice needed for the next edition. The maximum period therefore necessary to complete this exercise without incurring penalty charges is probably no more than one month.

A5.13 Where SPs migrate to number ranges that are not already in use Ofcom estimates that an average of three months will be required to obtain and open new 098 numbers and up to a further month to change the advertising. For these reasons Ofcom has not proposed a migration timescale of six weeks.

A5.14 If SES providers were to migrate to '0908' or '0909' ranges already held by their TCP the migration could be achieved more quickly and possibly within a six week period. However, SPs would incur the costs of migrating to 0908/09 and further costs of having to migrate again to '098' numbers at some future date when the '0908/9' number range is closed. Ofcom therefore advises against this course of action.

2. Three months

A5.15 As set out above most TCPs will require a minimum period of three months to obtain their new '098' numbers and possibly a further period to complete the changes to their advertising. Providers will have to have advised the relevant newspapers of the changes in numbers in time for their publications to be issued when the new numbers become available for use. This leaves no margin for slippage and could result in services being inaccessible to consumers for an unspecified period.

A5.16 Changes to advertisements could be initiated as soon as the SP knows their new '098' numbers. Ofcom considers that it may then be possible for the changes to advertising copy to be completed while BT is making the necessary changes to open the numbers on its network. However, it is more likely that SPs will want to know that their new numbers are operational before making changes to their publicity arrangements.

A5.17 Ofcom believes that, in the circumstances, such behaviour is not unreasonable given that SPs risk their customers being unable to call new numbers that have not been opened in time. Alternatively they may call '08' numbers that are still being advertised but which have been withdrawn from use where the services are advertised in magazines with a publication frequency of greater than one month and where a longer period may be required before the new numbers appear in subsequent editions. In either case the SP faces financial loss for reasons outside of their reasonable control.

A5.18 For these reasons Ofcom has not proposed a migration timescale of three months.

3. Six Months

A5.19 Having concluded that three months is also probably insufficient for services to migrate without SPs incurring unnecessary losses, Ofcom has considered a more

generous period of six months from the date of publication of the final statement during which time all SES must migrate to '098' numbers. Ofcom has also borne in mind the need to move SES from '08' numbers at the earliest opportunity in the interests of protecting minors and other vulnerable consumers.

- A5.20 Ofcom considers that the majority of SES SPs will not act to obtain and activate '098' numbers in advance of publication of the final statement confirming the decision. Furthermore, Ofcom considers it likely that they will not seek to change advertising to the new '098' numbers before they are certain these are ready for use on the main networks. However, Ofcom considers that in the majority of cases a six months period suffices to amend advertising where necessary after the new '098' numbers have been confirmed (including a safety margin for any unforeseen slippages in the above mentioned process).

More than six months

- A5.21 Ofcom's key objective in extending PRS regulation to include all SES is the minimisation of consumer harm through protection of minor and other vulnerable consumers from unconstrained access to services of a sexual nature. Ofcom believes this needs to be achieved in as short a timescale as possible but one which does not impose unnecessary or excessive costs on consumers or on SES providers who are trading legitimately.
- A5.22 For these reasons Ofcom sees no justification for a migration timescale of longer than six months.

Migration Costs

- A5.23 In its April NTS Statement and the September 2005 NTS Consultation, Ofcom considered the likely costs incurred by TCPs, SPs and consumers of the migration of services from 0845 and 0870 numbers. The details can be found in Annex 14 of the consultation and Annex 5 of the statement.
- A5.24 Based on the above mentioned analysis, the analysis in this document will concentrate specifically on potential costs for SES providers and consumers. In doing so, Ofcom has, where appropriate, leaned heavily on the analysis carried out for NTS migration and has made reasonable assumptions based on the costs involved, particularly for 0870 services which choose to migrate to 0844 or 0871.
- A5.25 NTS calls include both voice and data calls but for the purposes of this consultation calls to SES are assumed to be 100% voice since they consist mainly of calls to audio recordings and one-to-one conversations. The services are widely advertised in newspapers and the adult press, however, Ofcom has not established the extent to which consumers access SES having seen advertisements or whether they have favourite services which they call regularly.
- A5.26 Ofcom is aware that some SPs will already have unused numbers in the 0908/09 ranges allocated for SES prior to the '09' Statement and revised Numbering Plan published on 10 August 2006. Whilst Ofcom can not prevent SPs from using these rather than apply for new '098' numbers, they should bear in mind that Ofcom plans to consult on the requirement for all SES to use '098' numbers which might result in requiring all SES to migrate to '098'. Ofcom therefore advises SES providers to consider the costs of two migrations in a relatively short period of time and instead to move their services currently operating on '08' numbers directly to the new '098' range.

Costs to consumers

- A5.27 Where SES users choose the service in response to advertisements in newspapers and the adult press they should not incur any additional costs when SES access numbers change. It will be the responsibility of SPs to ensure callers understand the likely costs of SES on '09' numbers since most consumers consider '09' calls to be Premium Rate and therefore probably expensive. This is especially true where services continue to be offered at their former '08' price (i.e. up to 10ppm or per call) since there is no lower price limit on calls to the '098' range.
- A5.28 Customers who regularly use specific services, however, may incur the costs identified by Ofcom in the NTS Statement for misdialling an '08' number. These were estimated in the NTS Statement as an average of 25p for each service. Some SPs may use recorded announcements to re-direct their callers to new numbers and will therefore continue to receive some revenue from the '08' number to assist in defraying their costs. Others may simply discard the old number and rely on consumers doing their own research to find out the new number for their chosen service.
- A5.29 Since most SES are advertised in newspapers and the adult press SPs will need to update their advertisements with the new '098' numbers. Nevertheless, there are several reasons to expect that the incidence of misdialled calls following migration to the new numbers would be low:
- advertisements or promotional materials, could be updated during the notice period of 6 months proposed by Ofcom;
 - The notice period would also give SPs time to update any other contractual material that lists telephone numbers which would further reduce the incidence of misdialled calls; and
 - SPs also have the option of retaining their old numbers and to use announcements to re-direct callers to the new '098' numbers until traffic volumes decline to a low level, which should further reduce the proportion of misdialled calls. Provided the announcements have no SES content they can continue to operate after the end of the 6 month migration deadline.

Costs to Service Providers

- A5.30 Ofcom has proposed a period of 6 months from the date of the final statement, expected early in 2007, for migration of SES to '098' numbers to be completed. Given that this type of service does not generally rely on advertising media with longer 'shelf lives' such as telephone directories, catalogues, leaflets, business cards, fleet vehicles and signage, SPs costs will be limited to staff costs for changing numbers on published advertisements and any telecommunications costs levied by their TCP for changing numbers.
- A5.31 In the case of advertisements the costs are thought to be minimal and changes can easily be completed within the 6 month notice period, this especially if SPs start their migration process with effect from the date of this consultation.
- A5.32 Other costs SPs face include those associated with having to comply with ICSTIS regulation of PRS including the ICSTIS levy itself. SPs avoided these additional costs for SES on '08' numbers and were able to price their services to reflect this. It

is likely that some SES prices may therefore increase following migration to '098' numbers in order to recover any additional costs associated with PRS regulation.

- A5.33 Some consumers may also cease using SES after migration to '098' numbers because of the perceived higher charges associated with the '09' range. This could result in a reduction of the volume of calls to SES. The SES provider might compensate the associated possible revenue shortfall, by increasing call prices, but alternatively also by cutting costs.
- A5.34 It must be recalled that Ofcom is not consulting on the principle of moving SES to 098, this has already been signalled in both the NTS Statement and the Numbering Review. This consultation is merely seeking stakeholders views on the processes and timescale for achieving the extension of the definition of CPRS to include SES, regardless of the price charged for the calls. This will inevitably result in services having to move to new '098' numbers.
- A5.35 Ofcom, however, welcomes any comments stakeholders may wish to make about the estimates of costs involved and the proposed migration period.

Conclusions

- A5.36 As outlined in the previous paragraphs, when seeking a solution to implement the decisions made in the April NTS Statement, Ofcom has tried to balance the costs SES providers and customers of such services may face under the different implementation options against the overall consumer benefits gained from moving SES off '08' numbers as quickly as possible.
- A5.37 At the extreme Ofcom could have required that SES should cease operating on '08' numbers from the date of the statement that follows this consultation. Whilst addressing the consumer protection issues immediately this option might have resulted in a loss of business for SES providers caused by not being able to adjust their advertisements in time and would have caused unnecessary confusion to the detriment of customers of such services.
- A5.38 Ofcom has therefore sought to achieve the previously agreed consumer protection policy objective in the shortest practicable timescale whilst minimising the costs to the SES industry and customers of such services by allowing for a reasonable migration period to facilitate the necessary adjustments.. Ofcom believes that a period of six months allows sufficient time for services to migrate and includes a margin for those who require longer than most. Ofcom therefore proposes a migration timescale of six months from the date of publication of the final statement confirming this decision.

Annex 6

Notification of proposed modification to the PRS Condition

Notification of a proposed modification under section 48(2) of the Act

Proposal for modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) of the Act published by OFCOM on 17 October 2006 *The Conditions Regulating Premium Rate Services*

1. OFCOM in accordance with section 48(2) of the Act hereby makes the following proposal for the modification of the PRS Condition.
2. The draft modification is set out in the Schedule to this Notification.
3. The effect of, and OFCOM's reasons for making, the proposal referred to in paragraph 1 above is set out at sections 3 and 4 of the accompanying explanatory statement.
4. OFCOM considers that the proposed modification referred to in paragraph 1 above complies with the requirements of section 120(5) of the Act, as appropriate and relevant to each of the proposals.
5. In making the proposal set out in this Notification, OFCOM has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
6. Representations may be made to OFCOM about the proposal set out in this Notification and the accompanying statement by 14 December 2006.
7. Copies of this Notification and the accompanying statement have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
8. In this Notification:
 - (i) "the Act" means the Communications Act 2003;
 - (ii) "the Director General" means the Director General of Telecommunications;
 - (iii) "OFCOM" means the Office of Communications;
 - (iv) "the PRS Condition" means a condition under section 120 of the Act which is set out in the Notification under Section 48(1) and 120(5) of the Act published by the Director General on 23 December 2003"
9. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Act.
10. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and

(ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

11. The Schedule to this Notification shall form part of this Notification.

12. The modification set out in the Schedule to this Notification shall take effect immediately with publication of the Notification of the modification under section 48(1) of the Act.

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the

Office of Communications Act 2003

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Schedule

Proposal for modification of a condition under section 120 of the Act which is set out in the Notification under Section 48(1) of the Act published by OFCOM on 17 October 2006 *The Conditions Regulating Premium Rate Services*

The PRS Condition shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. The Communications Provider shall comply with:

(a) directions given in accordance with an Approved Code by the Enforcement Authority and for the purposes of enforcing the provisions of the Approved Code; and

(b) if there is no Approved Code, the provisions of the order for the time being in force under section 122 of the Act.

2. In this Condition,

(a) "Act" means the Communications Act 2003;

(b) "Approved Code" means a code approved for the time being under section 121 of the Act;

(c) "Communications Provider" means either:

(i) a person who:

(A) is the provider of an Electronic Communications Service or an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) is a Controlled Premium Rate Service Provider in respect of that Controlled Premium Rate Service;

(ii) a person who:

(A) is the provider of an Electronic Communications Service used for the provision of a Controlled Premium Rate Service; and

(B) under arrangements made with a Controlled Premium Rate Service Provider, is entitled to retain some or all of the charges received by him in respect of the provision of the Controlled Premium Rate Service or of the use of his Electronic Communications Service for the purposes of the Controlled Premium Rate Service;

or

(iii) a person who:

(A) is the provider of an Electronic Communications Network used for the provision of a Controlled Premium Rate Service; and

(B) has concluded an agreement relating to the use of the Electronic Communications Network for the provision of that Controlled Premium Rate Service with a Controlled Premium Rate Service Provider;

- (d) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) to simultaneously conduct a telephone conversation with one another without either:
- (i) each of them having agreed with each other; or
 - (ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted, in advance of making the call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;
- (e) "Controlled Premium Rate Service" means a Premium Rate Service (other than a service which is only accessed via an International Call) in respect of which:
- (i) the charge for the call by means of which the service is obtained or the rate according to which such call is charged is a charge or rate which exceeds 10 pence per minute; or
 - (ii) the service is a Chatline Service; or
 - (iii) is Internet Dialler Software operated; **or**
 - (iv) the service is a Sexual Entertainment Service;
- (f) "Controlled Premium Rate Service Provider" means a person who:
- (i) provides the contents of a Controlled Premium Rate Service;
 - (ii) exercises editorial control over the contents of a Controlled Premium Rate Service;
 - (iii) packages together the contents of a Controlled Premium Rate Service for the purpose of facilitating its provision; or
 - (iv) makes available a facility comprised in a Controlled Premium Rate Service;
- (g) "Dial-up Telephone Number" means the telephone number used by an end user's computer that connects it to the Internet
- (h) "Enforcement Authority" means, in relation to an Approved Code, the person who under the code has the function of enforcing it;
- (i) "Facility" includes reference to those things set out in section 120(14) of the Act;
- (j) "International Call" means a call which terminates on an Electronic Communications Network outside the United Kingdom;
- (k) "Internet Dialler Software" is software that replaces a Dial-up Telephone Number with a different Dial-up Telephone Number;

other than where it is used so that:

- a) an end-user's existing Internet Service Provider replaces the Dial-up Telephone Number;
- b) an end-user moves from his existing Internet Service Provider to another Internet Service Provider or is so moved with his consent.
- (l) "Internet Service Provider" means a person who provides end-users, by means of a Dial-up Telephone Number, with connection to the Internet in the ordinary course of its business.
- (m) "National Telephone Numbering Plan" means a document published by Ofcom from time to time pursuant to sections 56 and 60 of the Act;
- (n) "Premium Rate Service" shall have the meaning ascribed to it by section 120(7) of the Act;
- (o) "Sexual Entertainment Service" means an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

3. For the purposes of interpreting this Condition, except in so far as the context otherwise requires, words or expressions shall have the same meaning as ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has been ascribed in the Act.

Annex 7

Notification of proposals for a modification to provisions of the Plan under section 60(3) of the Act

1. Ofcom, in accordance with section 60 of the Act, hereby makes the following proposal for a modification to the provisions of the Plan.
2. The Condition has effect by reference to provisions of the Plan.
3. The draft modification to the Plan is set out in the Schedule to this Notification.
4. The reasons for making the proposal and the effect of the modification are set out in the accompanying consultation document.
5. Ofcom considers that the proposed modification complies with the requirements in section 60(2) of the Act.
6. In making the proposals referred to above Ofcom have considered and acted in accordance with the six Community requirements in section 4 of the Act as well as performed their general duties under section 3 of the Act and their duty as to telephone numbering in section 63 of the Act.
7. Representations may be made to Ofcom about the proposal by 5pm on 14 December 2006.
8. In this Notification:
 - 'Act' means the Communications Act 2003;
 - 'Condition' means General Condition 17 of the General Conditions of Entitlement set by the Director by way of publication of a Notification on 22 July 2003;
 - 'Director' means the Director-General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;
 - 'Ofcom' means the Office of Communications; and
 - 'Plan' means the National Telephone Numbering Plan published from time to time by Ofcom.
9. The Schedule to this Notification shall form part of this Notification.
10. The modification set out in the Schedule to this Notification shall take effect six months from the date of publication of the modification to the provisions of the Plan under section 56(2) of the Act.

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2003

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Schedule

The National Telephone Numbering Plan shall be modified as set out below (the deleted text has been struck through and added text underlined, both highlighted in yellow for ease of reference):

1. Under 'Definitions and Interpretations' in the Plan the definition of Sexual Entertainment Service shall be amended as follows:-

'Premium Rate Service' shall have the meaning ascribed to it by section 120(7) of the Act;

'Sexual Entertainment Service' means a Premium Rate Service which is an entertainment service of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies, that the service is of a sexual nature;

2. In Part A1 (Public Telephone Network Numbers) of the Plan the entries for 090, 091 and 098, shall be amended as follows: –

090 and 091	Special Services at a Premium Rate, that is charged at rates for Customers of BT which are generally either a) higher than 10p per minute up to and including £1.50 per minute including VAT, or b) fixed fee calls costing over 10p, up to and including £1.50 including VAT <u>(including 0908 and 0909 for Sexual Entertainment Services at a Premium Rate)</u>
098	Sexual Entertainment Services, <u>at a Premium Rate</u> , that are charged at rates for Customers of BT which are <u>generally either</u> a) <u>higher than 10p per minute</u> up to and including £1.50 per minute including VAT, or b) fixed fee calls costing <u>over 10p</u> up to and including £1.50 including VAT

Annex 8

Notification of a proposed modification of General Condition 17 under section 48(2) of the Act

Proposal for modification of Part 5 of the Annex to General Condition 17 (Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated) regarding Allocation, Adoption and Use of Telephone Numbers which is set out in the Schedule to the Notification under Section 48 (1) of the Communications Act published by the Director General of Telecommunications on 22 July 2003 as amended by OFCOM on 8 March 2006.

WHEREAS:

- A. the Director General of Telecommunications issued on 22 July 2003 a notification setting general conditions under section 45 of the Act which took effect on 25 July 2003 by way of publication of a notification pursuant to section 48 (1) of the Act;
- B. OFCOM modified the provisions of General Condition 17 as set out in its statement of 8 March 2006;
- C. section 45 of the Act provides that OFCOM may make proposals to modify the provisions of General Condition 17;
- D. for the reasons set out in the consultation document accompanying this proposal, OFCOM is satisfied that the test for modifying conditions, set out in section 47 (2) of the Act has been met;
- E. for the reasons set out in the consultation document accompanying this proposal, OFCOM considers that it has performed its general duties under section 3 of the Act and acted in accordance with the six Community requirements as set out in section 4 of the Act;
- F. a copy of the Notification will be sent to the Secretary of State;
- G. in the Notification and accompanying consultation document Ofcom invites representations about the proposals put forward therein by 14 December 2006;
- H. by virtue of section 48 (5) of the Act, OFCOM may give effect to the proposal set out in the Notification, with or without modification, only if:-
 - it has considered every representation about the proposal that is made to it within the period specified in the Notification; and
 - it has had regard to every international obligation of the United Kingdom (if any) which has been notified to it for its purpose by the Secretary of State;

THEREFORE OFCOM proposes the following modification

1. OFCOM in accordance with section 48 (2) of the Act hereby proposes the following modification of Part 5 of the Annex to General Condition 17 regarding Allocation, Adoption and Use of Telephone Numbers.
2. The draft modification is set out in the Schedule to this Notification.
3. In this Notification:
 - (i) “the Act” means the Communications Act 2003;
 - (ii) “General Conditions” means as set out in the Schedule to the Notification under section 48 (1) of the Communications Act 2003 published by the Director General on 22 July 2003; and
 - (iii) “OFCOM” means the Office of Communications.
4. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as in the Act.
5. For the purpose of interpreting this Notification:
 - (i) headings and titles shall be disregarded; and
 - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
6. The Schedule to this Notification shall form part of this Notification.
7. The modification set out in the Schedule to this Notification shall take effect six months from the date of publication of the Notification of the modification under section 48(1) of the Act.

Signed by

Gareth Davies

A person authorised by Ofcom under paragraph 18 of the Schedule to the

Office of Communications Act 2003

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Schedule

Modification of Part 5 of the Annex to General Condition 17 (Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated) regarding Allocation, Adoption and Use of Telephone Numbers which is set out in the Schedule to the Notification under Section 48(1) of the Communications Act published by the Director General of Telecommunications on 22 July 2003.

Part 5 of the Annex to General Condition 17 shall be modified as set out below (the added text has been underlined and highlighted in yellow for ease of reference):-

5: Public Telephone Network Numbers not available for Allocation but which can be Adopted where already Allocated	
Numbers beginning	Designation
0500	No charge to Caller
07624	Radiopaging and Mobile Services (Isle of Man)
0800 (plus-6-digits)	Special Services – No charge to caller (except where charges shall be notified to callers at the start of the call)
<u>0908 and 0909</u>	<u>Sexual Entertainment Services at a Premium Rate</u>