



## Internet Telephony Services Providers' Association

### ITSPA response to Ofcom's consultation on Simplifying Non-Geographic numbers

#### About ITSPA

The Internet Telephony Services Providers' Association (ITSPA) is the UK VoIP industry's trade body, representing 60 UK businesses involved with the supply of VoIP and Unified Communication services to industry and residential customers within the UK. ITSPA pays close attention to the development of VoIP regulatory frameworks on a worldwide basis in order to ensure that the UK internet telephony industry is as competitive as it can be within international markets.

#### **Individual members may respond separately to this consultation.**

A full list of ITSPA members can be found at <http://www.itspa.org.uk/>

#### Overview

ITSPA members welcome the opportunity to input into the Ofcom consultation surrounding the simplification of Non-Geographic telephone numbers. Improving consumer confidence in non-geographic numbers is an important initiative and ITSPA believes this is an area that requires further attention. We welcome the opportunity to participate in future discussions on this issue.

We have limited our response to the questions concerning the impact of the options outlined within the consultation document.

***Q6.1 Do you agree with our assessment of the likely failure of deregulation to address the identified market failures? If not, please explain why, ideally with reference to the analysis set out Annex 2 and 3.***

Deregulation on its own would have two effects. Firstly, the removal of the BT Retail Call Origination Condition would enable BT to inflate its retail prices and profit from such a change to regulation.

The Call Origination Condition currently acts as a competitive benchmark forcing prices for NGCS in the fixed world down towards BT – although the idiosyncrasies of the BT Retail Formula for calculating BT to Operator POLOs mean that for OCPs to match all BT Retail prices, they can make a

net loss. In either event, the probable increase of prices by BT Retail will also precipitate inflation in prices by alternative operators, none of which we believe is in the consumers' interest.

Deregulation would also remove the pricing guidance in the National Telephone Numbering Plan ("NTNP") which gives BT and, to some extent, other OCPs directions on how to set prices for calls to certain non-geographic number ranges. ITSPA members welcome the inference in the consultation that the NTNP requires more granularity of detail.

The horizontal and vertical externalities that Ofcom has described are peculiar to non-geographic numbers, which is precisely why a more interventionist approach has been required. Deregulation would almost certainly reduce awareness of pricing for NGCs and increase customer confusion.

In short, providing BT with an incentive to increase its retail prices will almost certainly lead to prices charged by all Originators to drift upwards, since BT's retail price currently acts as a starting reference point and a benchmark.

Given the likely removal of the Wholesale Call Origination Condition in 2013, it is imperative that Ofcom find a better way of regulating Non Geographic Call Services ("NGCS") before then.

***Q6.2 Do you consider that we were right to put aside consideration of wholesale intervention at this stage? If you disagree please set out your views, ideally with reference to the wholesale analysis set out Annex 3.***

ITSPA disagrees, primarily because the termination market works largely well. The source of the plethora of recent Disputes are all around the origination market and the slicing up of the "origination pie" – interventionist regulation is obviously required and even the Unbundled Tariff will need some to work.

***Q6.3 Do you agree with our assessment of the limitations of informational remedies to address the totality of the identified market failures? If not, what informational solutions would you propose and to what extent do you see that they would resolve the market failures identified, ideally with reference to the analysis set out Annex 4.***

The introduction of additional tariff publication requirements in General Condition ("GC") 14.2 has done nothing to improve customer awareness of and satisfaction with non-geographic numbers. We believe that the requirements of GC14.2 in relation to the publication of tariff information for NGCS calls are simply not being adhered to. In many cases they are not given equal prominence in the pre-sale pricing information. In some cases, the rate quoted is incorrect.

The requirement in the NTNP for Originating Communications Providers (“OCPs”) to notify callers of any charges for 080 calls via a Pre-call Announcement (“PCA”) has already been shown to be unhelpful. Mobile users have no choice at the point of call if they are not close to a fixed line phone. So the PCA merely serves to dilute and diminish the “meaning” of 080 numbers (i.e. that they should be free to caller), thus damaging its brand and removing the benefits of the service to callers from mobile phones. It increases price awareness, but does not benefit the consumer in any other way. We agree with Ofcom’s conclusion in paragraph A4.50 that PCAs are unlikely to provide an effective and efficient general remedy for NGCs under the current pricing structure.

It is imperative for ITSPA members that rely on originating and terminating NGCS as a core part of their businesses that consumer confidence is restored as quickly and fully as practicable.

We feel strongly that call price labelling (via a price information message) and price information lines would not be effective, since they are onerous and time consuming for the caller and require investment by our members that would result in no consumer benefit.

Informational remedies are only worthwhile if they enhance effective competition at the point of subscription. Since callers do not make their telephony service subscription decisions according to the relative price of calls to NGN numbers (nor are they marketed to them on that basis), such remedies are of little value. The existing informational remedies do not seem to have imposed a “competitive discipline” on OCPs (as suggested in paragraph A4.36) as some are still charging for 080 calls and many are still charging more than BT for other NGNs. Informational remedies do not, as Ofcom concludes in paragraph A4.51, address the concerns stemming from vertical and horizontal externalities.

With the huge variety of NGN call types and price bands that exist today, it is very hard for customers to compare prices if they attempt to do so. An investment of 5 minutes surfing the websites of the major domestic supplying OCP (other than BT) will demonstrate this in relation to NGCS.

We agree with Ofcom’s suggestion in paragraph A4.39 that informational remedies would be more effective if NGCS charges were simplified.

***Q6.4 Do you agree with our assessment of unbundled tariffs as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of unbundled tariffs in this market? Ideally include in your response reference to the analysis set out Annex 5.***

No, we do not agree that unbundled tariffs would be an effective remedy for the market failures surrounding NGCS and we disagree with Ofcom's proposal to apply them to any range.

We do not believe that an information message would provide more useful information than that provided today. Today, at least a customer knows what the price from a BT landline would be, which serves as a useful benchmark. We already know that customers do not know what their service providers charge for NGCS, so they are unlikely to know what their Access Charge (AC) would be unless pricing for ACs were very much simpler than current pricing for NGCs. We also do not believe that the majority consumers know what their out-of-bundle charges, an investigation of which in the consumer testing planned by Ofcom would demonstrate that the unbundled tariff model is flawed.

In paragraph A5.10, Ofcom suggests that unbundled tariffs would "facilitate competition between SPs". This is only relevant where a customer has an effective choice of services. This might work, for example, for competing chat lines, but would not apply when calling a TV talent show, nor would it apply when calling a service which you have already purchased, such as a utility service.

Ofcom states in paragraph A5.12 that the SC would be constrained by competition between SPs. Ofcom assumes that SPs compete for customers on price, but very rarely do they do so. Absent competition at the SP level, unbundled tariffs have no value. Even where they attempt to do so, any price competition is eradicated by the pricing at the retail level. So there is no incentive on SPs to compete on price. ITSPA members do note, though, that the market for termination (TCPs) is highly competitive. However, obfuscation of pricing and aggregation of dial-strings to the maximum price by some OCPs means that SPs have no ability to compete on price (which Ofcom notes on the DQ services)

Ofcom also believes that the AC would be constrained by and would facilitate competition between OCPs. We have already seen, as in the case of calls to 080 and other NGNs, that OCPs do not compete on the basis of NGCS charges. The fact that 080 is free of charge from some OCPs has not constrained the mobile OCPs from charging considerably more than zero (up to 40ppm plus VAT in some cases).

We would go as far as suggesting that Ofcom has no conclusive evidence that competition would constrain the AC between OCPs.

The only possible point of competition would be at the point of call but, unless the AC were very simple in structure across all number ranges and OCPs, this would only work at an approximate level, such as a belief that fixed is likely to be cheaper than mobile.

Although it has been suggested that unbundling these tariffs would educate users about the chain of costs, we do not believe this is necessary or desirable. All call charges, not just non-geographic, comprise a number of components, including payments to originators, terminators, transit providers, range holders, and so on. The customer does not care and need not care. They are only concerned with what they must pay. There is no need to make life complicated for them – quite simply, the end users “just want to make a phone call” and want to know the price, visibly, quickly and simply.

Ofcom suggests in paragraph A5.52 that allowing OCPs to vary their Access Charges would send efficient pricing signals to callers about the underlying cost of providing a call. We believe that a more interventionist approach is required in relation to NGNs given the overriding policy drivers surrounding most of the number ranges. Protecting consumers from harm by simplifying the meaning in terms of price and service-type of the various non-geographic number ranges is more important than attempting to force competition amongst OCPs or educating consumers on the cost components of calls.

We agree with Ofcom’s concluding sentence in that paragraph: “Increasing complexity can lead to the detrimental effects identified in Annex 2, such as poor price awareness and higher non-geographic call prices”.

The other important issue with unbundled tariffs is the fact that implementation would take too long. This market has been broken for some time and it is important to apply an effective remedy as soon as possible.

Whilst we strongly disagree with the introduction of any unbundled tariffs, we discuss the relative merits of the options above below.

For the reasons set out above and in Ofcom’s paragraph A5.54, we believe that Option 2a) is preferable to Option 1. More than one AC per tariff package would lead to too many different charges for consumers to remember. However, we believe that Ofcom would come under pressure from OCPs to introduce more than one AC, such as one for 0844, one for 0871 and one for 09. If this were to be permitted, then this would do little to improve price transparency or consumer price awareness.

That said, we do not believe that a single access charge is actually possible to achieve as this implies there is a flat cost of origination to all NGCS ranges. This isn’t the case and has clearly been acknowledged by Ofcom with the current regulatory regime – the PRS Bad Debt Surcharge for example is a clear indication that the cost (due to increased risk) of originating to an Adult

Entertainment Service is markedly different to an 0844 1ppm number (which could be of social value). A single access charge results in the expensive discretionary services being cross subsidised by “business” numbers which may be socially important. This means that there has to be at least two and there are grounds to consider three.

We also believe that it would have to be combined with Option 2b) – i.e. that the AC should solely consist of a ppm charge, the ppm charge should be the same for 070, 0843/4/5, 0871/2/3 and 09, should not vary by time of day and should not include fixed price per call elements. Without such restrictions there would certainly be too many permutations for consumers to remember. This does however, lead to a “psychological barrier”, which is consumers accepting that a fixed price call also attracts a pence per minute element – something we believe will lead to confusion.

We also note that many consumers have both a fixed line and a mobile – this necessitates them to remember twice as many ACs – one for each, which again fuels consumer confusion.

We are also inclined to agree with Ofcom that it is preferable not to specify any principles governing variations in the AC between different tariff packages offered by the same OCP (Option 3). However, this obviously adds another layer of complexity to the AC.

As for the level of the Access Charge, setting a maximum amount of AC is no less intrusive than setting a maximum retail price. Yet without it, overall charges for NGCs would doubtless remain at the same level as they are today and thus the consumer harm would be perpetuated. This is due to the lack of competitive constraints and the horizontal and vertical externalities. Without a single maximum AC, mobile phone users in particular would continue to be disadvantaged.

We would advocate, purely for consumer simplicity, that OCPs should charge no more than their standard geographic rate for that tariff package for the AC, and that the AC part of the call would have to count towards the inclusive geographic minutes. The SC would then be applied on top of that geographic rate.

#### The Level of the Service Charge

As discussed above and in Ofcom’s paragraphs A5.111 – 118, competition amongst SPs is generally weak on price and only occurs in limited circumstances, such as for adult entertainment services.

#### Price Disclosure – OCPs

Ofcom proposes that OCPs will be required to disclose to the customer, in a durable form, the AC that will apply to their package at the point of sale. Given that most sales of consumer telephony packages are made on the phone, this presumably means that this tariff information would be sent in the post during the cooling off period. Unless it is displayed very prominently, it is likely that the information will not be absorbed by the customer. As discussed previously, unless the package is marketed on the strength of NGN call tariffs (unlikely as they represent a small proportion of calls and calls are marketed according to inclusive packages), then the pricing information is likely to go unnoticed, even if included in the post-sale literature.

Although OCPs are already required to publish their tariffing data, it is commonplace for OCPs to fail to display their prices for all NGNs on their websites.

#### Price Disclosure - SPs

Providers of services on 0871, 09 and 118 numbers are required by PhonepayPlus to inform consumers of the cost of the call before they incur any charge. However, this requirement is frequently not observed.

Many of the businesses which are now using 0871 (perhaps having moved away from 0870) simply do not state the cost of the call on their websites. The result is that many customers of such businesses are worse off than they were when they were dialling an 0870 number. Such breaches are too numerous for PhonepayPlus to pursue.

Even where the cost of calling a number is advertised by the service provider, that does not help consumers who have been given the number to dial by someone else, such as wedding guests or conference attendees being given the number of local hotels by the event organisers. They would have no sight of an unbundled tariff and so would remain in the dark as to the cost of the call. Unbundled tariffs would lead to continuing customer confusion and low price awareness.

In the case of services such as DQ, which require on customers recalling their numbers from TV, radio or newspaper adverts, it is unlikely that customers will have remembered the cost of calling as well as the number to dial.

So an unbundled tariff would only be of any benefit in high visible point-of-call advertising, such as that for a TV talent show or for chat lines. Unbundled tariffs would not be as detrimental on the 09 number range, but we do not believe that they would offer any improvement on the status quo.

On the 0843/4/5 and 0871/2/3 ranges, we believe the effect would be detrimental to consumers.

## Evaluation of Unbundled Tariff Against Assessment Criteria

Ofcom suggests in paragraph A5.216 that unbundled tariffs would reduce the complexity of pricing for NGCs and that consumers would only need to compare the ACs charged by different OCPs. Even if customers chose their telephony services according to NGC charges (which they don't) this method would do nothing to improve the general awareness of the meaning of different non-geographic number ranges. It doubles the work the customer has to do: firstly they have to compare Access Charges, then they have to understand the Service Charges. It is unnecessarily complex.

Ofcom states in paragraph A5.216 that the unbundled remedy would enable SPs more easily to communicate the cost of calling their services. We dispute this, as SPs would only be able to communicate the SC portion of the call, and not the entire cost. We know from the current situation that partial information is not helpful to consumers.

Ofcom has provided no evidence that that the overall price of calls to NGNs would fall with unbundled tariffs. There is simply insufficiently strong competition amongst both OCPs and SPs. For the same reason, this remedy would do little or nothing to stimulate demand for NGN services.

***Q6.5 Do you agree with our assessment of maximum price as a potential remedy for the market failures identified? Do you agree with our assessment of the pros and cons of this approach? What do you consider would be the impact of the introduction of maximum prices in this market? How should such a scheme be structured? Ideally include in your response reference to the analysis set out Annex 6.***

We are strongly in favour of maximum retail prices to be applied to all non-geographic number ranges. We believe that certainty is more important than competition where NGNs are concerned. Although this would be a relatively interventionist approach, we do not believe it is significantly more intrusive than setting a maximum Access Charge. Moreover, it is important to remember that NGNs intrinsically require more regulation, hence the presence of PhonepayPlus.

Ofcom is concerned that OCPs should have freedom to set prices within the "headroom" that they have. However, as discussed above, we do not believe that this is a necessary outcome from a consumer protection point of view. We believe that retail price regulation is not overly intrusive in the case of non-geographic numbers and that competition amongst OCPs in relation to NGNs is not strong enough to avoid consumer harm.

Ofcom is concerned (paragraph A6.17) that the maximum price will not be informative enough, since it will not indicate the actual price paid by the caller. Given our firm belief that unbundled tariffs will not, in reality, allow customers to know the cost of the call at the point of call (without looking it up), we believe that customers are more likely to know the price of a call with maximum tariffs, especially if multiple price maxima are applied.

ITSPA members would like to highlight to Ofcom that CPs pricing to the maximum isn't necessarily a bad thing and should be considered fully "in the round". If the NTNP had suitable granularity and there was intervention in the wholesale termination market, consumer detriment would be almost non-existent.

Ofcom is also concerned (paragraph A6.18) that OCPs might increase the price of other services if their profits from NGCs are reduced – the tariff package effect. We do not believe that this should be necessary to any great extent. Firstly, it would only apply if the OCP has been *subsidising* other services, as opposed to merely making high margins/ super-normal profits on NGCs, or if the maximum price would be insufficient to enable the OCPs to recover their costs. We are not aware of any evidence that this is the case. Secondly, OCPs are such a small proportion of calls that even if prices of other services had to be increased, it would not need to be by the same amount.

ITSPA members believe that too much weight is given to the tariff package effect and note that some CPs are currently challenging this at the CAT as part of the "laddering" appeals.

#### Approach to setting maximum retail prices

Maximum prices should be based on the limits currently specified in the NTNP. We see no merit in setting maximum prices based on current retail prices, since some OCPs are charging much more than the levels specified in the NTNP.

Ofcom says in paragraph A6.62, "It is difficult for us to know the 'correct' retail price for non-geographic calls." We disagree. In our view, the correct retail price is the price point selected by the Service Provider. Otherwise, what is the point of the NTNP?

#### Different maximum prices for fixed and mobile originators

Ofcom predicts that if maximum prices were set at a level to reflect fixed call prices, the impact on the profits of mobile OCPs would be significant. Ofcom would therefore expect mobile OCPs to respond by increasing their prices for other services, such as geographic calls, albeit by a smaller amount (paragraph A6.36). As we have stated above, we do not believe that mobile OCPs would

necessarily behave in this way unless their profits from NGCs are currently subsidising other services or unless the maximum price would leave them making a loss on NGCs. There is no evidence that either of these are the case. So for geographic calls, for example, they would continue to be constrained by competition when setting their prices.

### Level of Termination Rates

We believe that the level of the termination rates would have to be regulated in order for maximum pricing to work. The vast majority (the "long tail") of TCPs have weak negotiating power against the large OCPs, and so Ofcom should not wait to see if undesirable outcomes "materialise" but they should assume from the start that they will do and set appropriate termination rates. This would remove any uncertainty from the beginning.

### Granularity

We believe that it is important to retain as large a level of granularity as possible so that SPs can continue to select an appropriate price level for their service. This enables a degree of competition where relevant (eg for chat lines).

Although this will result in more complexity for consumers, this would be mitigated if all the maximum prices and bands were brought into the NTNP to be used as a reference point for consumers.

We agree that it is not appropriate for there to be a lot of headroom for OCPs between the maximum retail price and the termination rate they pay (although an allowance has to be made for long supply chains, which some ITSPA members form part of). As discussed above, we do not believe that retail price competition should be the primary goal. Since NGCS will be, in effect, a regulated service, we are not concerned about the possibility (likelihood) that OCPs will tend to price towards the maximum. It is certainty that is important, not price competition.

In our view, the price maxima should not vary between fixed and mobile providers as this would erode the reference value of the NTNP, and the recent Statement on Wholesale Mobile Call Termination implies, assuming cost of termination is a proxy for cost of origination, that there is a minimal difference in this charge control period between MNOs and FNOs.