Representing the Communication Services Industry

Federation of Communication Services

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Dear Clive

Regulation of 0871 Services

This response has been produced on behalf of the Numbering Group of the Federation of Communication Services, FCS, the trade association for the communications services industry. A full list of FCS members may be found on the website www.fcs.org.uk.

The FCS Numbering Group was set up in 2006 in response to Ofcom's NTS statement and Numbering Review to provide a collective view from numbering providers, their resellers and others associated with the telephony market. The group's objectives are to ensure that there is a fair open and competitive environment and to promote best practice and standards for number service providers.

We welcome the opportunity to respond to this consultation on proposals to extend PRS regulation to 087 numbers.

The basic position of the group with regard to the regulation of 087 numbers has not substantially changed from previous submissions contained in our responses to the following consultations:

Number Translation Services – a way forward (submitted in December 2005)
http://www.ofcom.org.uk/consult/condocs/nts_forward/responses/af/

Telephone Numbering –safeguarding the future of numbers (submitted in May 2006),
http://www.ofcom.org.uk/consult/condocs/numberingreview/responses/

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The original consultation carried out by ICSTIS on the regulation of 0871 (submitted in June 2007)
http://www.phonepayplus.org.uk/service_providers/responsestoconsultations/0871new.asp

It remains the view of the group that 087 numbers are not "Premium Rate" and do not need to be subject to PRS regulation which is disproportionate for a number range with a maximum call charge of 10p per minute. Neither Ofcom nor ICSTIS/PhonepayPlus has demonstrated levels of customer harm in 0871, which would justify such an approach. Much of the perceived problem appears to be focused on call centre behaviour and charging by the mobile network operators which can be addressed without making changes to the regulatory regime for this number range.

The designation of the specified 08 rates (0871, 0872 and 0873) as premium rate will only serve to blur the boundaries and further confuse consumers and this confusion will be exacerbated by parallel proposals to brand 0870 as a geographic range. Thus compromising the strategic approach outlined in the Numbering Review.

The essential difference between PRS and NTS can be summarized as

- PRS - the call charges pay for the service provided whereas
- NTS - the call charges are funding *access* to the service

The 087 range clearly falls into the latter category. We are also concerned that this heavy handed approach to regulation may spread to the 084 ranges in response to media pressure about "inappropriate" use of these ranges for e.g. doctors surgeries. In our view, such an approach will severely distort this well established and vibrant sector of the market leading, at worst, to the closure of bona fide services that are of significant benefit to the consumer and the UK economy.

In our view the key issue is one of pricing transparency and we believe that Ofcom should seek other remedies to address this issue rather than imposing a regulatory regime which is, at best, disproportionate, complex and costly and arguably entirely inappropriate on a number range which is not Premium Rate. This approach is underpinned by the new Consumer Protection from Unfair Trading regulations published by BERR, which came into force on 26th May. In particular with respect to misleading information pertaining to the price (or the manner in which the price is calculated where this is likely to cause the average consumer to take a transactional decision (i.e. to place a call) which he (or she) would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

On the detail of the proposed regime, we do not believe that the proposed levy based on a notional outpayment is justified or fair and we reiterate our preference for a "polluter Pays" approach. Especially when a number of 0871 services use all the termination payment to fund the connection of calls to international destinations (e.g. for use by 24x7 off-shore call centres).

Our responses to the specific consultation questions are below:

Question 1: *Do you have any comments about the proposed extension of PRS regulation to 0871, 0872 and 0873 numbers?*

We do not support this (see our comments above)

Question 2: *Do you have any comments about the PhonepayPlus Statement of Application and Ofcom's comments about the concerns that have been raised by stakeholders?*

We believe that, due to the fundamental differences between the supply chains of 087 and genuine PRS, the Statement of Application is not in itself sufficient to provide clear guidance to the application of the PPP code to 087 numbers. We are keen to see detailed helpnotes which will provide such guidance and would be very happy to participate in industry workshops to draw these up.

We have previously highlighted disparities in such terms as "Service Provider" which have different meanings in the PPP Code of practice to that applied in the Communications Act or Ofcom statements such as NTS a way forward.

Question 3: *The proposed extension of PRS regulation would mean that service providers offering services on 09 numbers would not be permitted to use 0871, 0872 or 0873 numbers for complaints unless call charges are refunded. Ofcom would also welcome stakeholder comments about this secondary impact of the proposals.*

We have some reservations about the practicalities of organizing refunds in these circumstances but understand the principle.

Question 4: *Do you have any comments on the proposed modifications to the PRS Condition?*

As noted above, we do not consider that calls charged for at this price point merit PRS regulation or that sufficient harm has been demonstrated to justify this.

Question 5: *Do you have any comments about the Impact Assessment for these proposals?*

As a result of information which has emerged in connection with recent problems associated with the requirement for pre-call announcements on 070 and 0870 interventions, we would wish to be reassured that Ofcom has made an adequate impact assessment and has carried out a Risk Assessment as required under HS safety at work regulations. We would ask Ofcom to publish details of these (if any) in the light of the above experience.

Question 6: *Do you have any other comments?*

We believe that the key issue in relation to the 087 ranges is one of price transparency and that Ofcom should be addressing this specific issue in a more appropriate way i.e. by taking an approach which is more strategic and much wider in scope rather than imposing an inappropriate regulatory regime which will impose cost on industry but bring little benefit to consumers. In this way, Ofcom will be seen as actively delivering consumer protection with respect to general call pricing and encouraging industry to better comply with the Consumer Protection from Unfair Trading regulations 2008.

I trust that the above is helpful. The FCS Numbering Group would be very happy to discuss in more detail with Ofcom any of the points raised if required.

Yours sincerely

Michael Eagle
General Manager