

*Representing the Communication Services Industry*



16<sup>th</sup> June 2008

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Dear Geoff

**Changes to 0870**

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](http://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 proposed modifications to the changes to the 0870 regime which were originally set out in the Ofcom statement "NTS – a way forward", published in April 2006.

The general view of the group has not changed substantially from the position set out in our original response to "NTS – a way forward", which we submitted in December 2005 [http://www.ofcom.org.uk/consult/condocs/nts\\_forward/responses/af/](http://www.ofcom.org.uk/consult/condocs/nts_forward/responses/af/) and as supplemented by our further comments on the subject contained in our response to the Numbering Review, "Telephone Numbering –safeguarding the future of numbers", which was submitted in May 2006 <http://www.ofcom.org.uk/consult/condocs/numberingreview/responses/>.

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**The Federation of Communication Services Ltd**

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Essentially we support the clear and simple approach and the underlying logic of the Strategic Numbering Review which is clearly contradictory to the approach outlined in the NTS proposals, resulting in the delays and confusion which we have seen since original publication of the 2005 NTS statement.

Our view is that the current consultation is far too narrowly drawn and fails to take account of the wider issues. We believe that these proposals do not effectively address the concerns of consumers or the needs of the majority of communications providers and that Ofcom has missed the opportunity to address the key underlying issue, which is one of price transparency, particularly with respect to mobile 0870 call origination.

We also wish to highlight the significance of new Consumer Protection from Unfair Trading regulations published by BERR which came into force on 26<sup>th</sup> 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. place a call) he (or she) would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

With respect to termination rates, we also note that, since publication of the consultation document, the Competition Appeal Tribunal has published a judgment on the core issues in disputes between BT and the mobile network operators in which the appeals of the MNOs have been found to be well founded. (Case numbers 1089/3/3/07, 1090/3/3/07, 1091/3/3/07 and 1092/3/3/07 judgment published 20 May 2008.) In essence, the gains for trade argument has been rejected, with the CAT stating “the use of the gains from trade test was a serious error by Ofcom and did not form a proper basis for a decision”, which will have a significant bearing on how the dispute between BT and various CPs on termination rates is resolved and, therefore, on Ofcom’s original NTS proposals.

We further believe that it is unfortunate that the proposed changes will effectively enable OCPs to charge for calls as they wish, to the detriment of consumers when TCPs are unable to do so, to the detriment of reasonable competition and innovative services.

In the light of this significant recent change, we do not believe that Ofcom should proceed with the current proposals but should engage with all stakeholders and in particular with industry experts to carry out a more wide ranging consultation aimed at addressing the issue in a comprehensive way, taking into account not only the problems associated with pre-call announcements but also the CAT judgment and the introduction of the 03 range which provides a geographic rate alternative.

Our responses to the specific consultation questions are below:

**Question 1:** *Do you have any comments on the pricing transparency options considered and Ofcom’s proposal to implement Option B?*

We have repeatedly stated in submissions to Ofcom that this is the core issue which needs to be addressed rather than changes to the NTS model itself. However, we do not believe that the Option B suggested by Ofcom will address this effectively. In fact we

believe it will make matters worse, leading to even more price opacity and consumer confusion.

**Question 2:** *Do you have any comments on the draft notification in Annex 3 to make a change to the SMP Condition?*

We believe that removing 0870 numbers from the NTS condition is not appropriate and that, due to its dominant market share, will be of benefit to BT and therefore harm competition. It will also be detrimental to consumers who will lose the one firm basis for understanding 0870 pricing.

**Question 3:** *Do you have any comments on the draft notification in Annex 4 of a proposed amendment to General Condition 17 to make the proposed designation for 0870 calls applicable to all OCPs?*

As noted above, we do not believe that the changes proposed in Option B will be effective in addressing the core objectives or in delivering benefits for either consumers or the majority of communication providers (particularly Terminating Communications Providers). We do not therefore support this change, which is intended to give effect to the proposed Option B changes. Implementing Option B will simply benefit those large Originating Communication Providers which have a significant retail customer base. We also note that existing requirements under GC14.2 have not to date been effectively enforced.

**Question 4:** *Do you have any comments on the draft notification in Annex 5 of a proposed amendment to the National Telephone Numbering Plan introducing the revised designation for 0870 calls?*

See response to question 3

**Question 5:** *Do you have any comments on the draft notification in Annex 6 of a proposed amendment to numbering application form S8 to align it with the revised designation for 0870 calls in the National Telephone Numbering Plan?*

See response to question 3

**Question 6:** *Do you have any comments on the draft notification in Annex 7 of a proposed amendment to General Condition 14?*

See response to question 3

**Question 7: Do you have any further comments**

We reiterate that we do not believe that the current proposals will be effective in achieving improved price transparency for consumers or providing certainty for the industry.

We urge Ofcom to engage meaningfully with industry and other stakeholders to carry out a more wide ranging consultation which will address the issue in a more comprehensive way, taking into account not only the problems associated with pre-call announcements but also addressing the implications of, for example, the recent CAT judgment referenced above. The review should also bring into its scope the impact of the 03 range which was introduced after the initial NTS consultation and which reduces both the need for and the benefit of the 0970 changes originally proposed, except to BT.

We believe that one logical outcome of such a review would be to leave the 0870 model unchanged while addressing the very real concerns about price transparency from a different angle, much wider in scope and more strategic vision. Ofcom will thereby 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

A handwritten signature in blue ink that reads "Michael Eagle". The signature is written in a cursive, slightly slanted style.

Michael Eagle  
General Manager