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Dear Tanya

Response to the Draft determinations to resolve 0870 call termination rate disputes between BT and various operators issued on 23 April 2009

The [FCS](#) Numbering Group represents companies that offer NTS and other numbering services to the UK market. We offer our comments on the draft determination on behalf of those FCS members currently in the 0870 market and who are directly affected by these conclusions.

There has been regulatory uncertainty surrounding the future of 0870 services for 3 years since Ofcom published its policy documents in advance of its Numbering Strategy in 2006. An attempt to require pre-call announcements for all 0870 calls was rescinded in late 2007 due to potential breach of ITU regulations and resulting health and safety concerns. Further delay arose from the termination rate dispute within the CAT. The telecoms industry supplying 0870 number ranges and the end user industry using 0870 numbers for inbound calls have been equally unsure during this period as to what the regulatory outcome for the sector would be and when any new regulation would be put in place.

Ofcom claims that the bulk of 0870 users have already migrated to other numbers but we question the evidence for this [Statement 4.14]. We are concerned that Ofcom remains fixated on the term "0870 SP", but ignores economically important SME users whose enterprises are under strain from the economic downturn. Ofcom's apparent oversight in this area is consistent with its poor understanding of small business users of other IN services, acknowledged by Ofcom's 070 U-turn last year.

Following these years of delay Ofcom has now ruled that implementation of the regulations published in the statement, alongside this draft determination, should be rushed through within 3 months. Why is this? We believe this approach is disproportionate, especially as the outcome of this draft determination is not yet clear and that six months were given to companies to comply with new 0871 regulations under the Phonepay Plus code. A clear 6 months from the final published outcome of this dispute is the minimum notice that Ofcom should make to industry to allow it to adapt in a measured manner. We ask Ofcom to explain the health and safety risks associated with Ofcom's precipitous approach.

Our members have expressed a very strong concern at the proposed termination rates themselves. The rates are below cost for the companies concerned and appear to be designed specifically to favour the incumbent operator's marketing plan. [Statement 1.24] One result of the determination will be to put some smaller competitive suppliers of 0870 numbers out of this business, but will benefit BT as the incumbent. Such a reduction in competition we argue is an anticompetitive gesture and requires reconsideration.

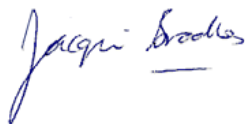
The draft determination indicates that the termination rate will be 0.5p per minute peak for 0870 calls. OCPs have the advantage of assessing the impact of this "higher than geographic" termination charge in their decisions of whether to align 0870 retail call charges with geographic call charges. In the scenario that an OCP decides that it cannot align the retail call charges due to the higher termination charge it has the option to charge a higher retail rate and comply with the amendments to General Condition 14.2 (the changes to 0870 statement) to enable it to recover its cost.

Clearly Ofcom has given consideration to OCP cost recovery in the event of a higher than geographic termination charge, by making amendments to GC 14.2. We do not consider an absence of SMP in 0870 call origination to be Ofcom's only mitigating factor in amending GC14.2 and we ask Ofcom to advise of all other considerations it has taken into account. In the case of a TCP, if the termination rate does not enable recovery of cost, then Ofcom has offered no option for the TCP to recover its costs without them incurring even more costs - i.e. billing and collection. This is in contrast to the OCP who will already have these arrangements in place and will in effect incur no extra cost. Given these factors Ofcom, in our view, is clearly favouring one form of communication provider over another and ignoring its regulatory principles in its draft determination.

For the final determination we recommend that Ofcom should analyse the proposed rates offered by TCPs who are party to the dispute in more detail, in view of allowing those termination charges to come into effect as long as Ofcom are satisfied they contain legitimate costs. We note from the draft determination that Ofcom looked at this approach but was immediately dissuaded by BT due to unqualified number portability objections. We urge Ofcom to investigate these objections in more detail to clarify their validity. In adopting this approach Ofcom will bring consistency to both the OCPs and TCPs and with its regulatory principles.

Finally, it is not clear how the consumer will benefit [statement 1.23] as increasing numbers of calls are from mobiles with call rates "considerably higher" than calls from fixed lines and there is little incentive for reduced termination rates to be passed on to consumers in the mobile sector.

Yours sincerely



Jacqui Brookes OBE
CEO