



The Use of Non-Geographic Numbers in Broadcasting

Clearer phone costs for viewers and listeners:
Amendments to the Broadcasting Code

Statement

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About this document

This statement sets out the changes which Ofcom is making to the rules about the use of non-geographic numbers in broadcasting.

Non-geographic telephone numbers, such as those beginning 0845, are generally used by consumers to access services provided by businesses, helplines and government agencies. In addition, broadcasters currently use some non-geographic numbers for a variety of purposes to allow viewers and listeners to interact with programmes. For example, by voting for an outcome or participating in a phone-in.

Analysis by Ofcom indicated that consumers were often confused by the cost of calls to non-geographic numbers. This confusion meant that some consumers could both under and over use such numbers without fully understanding the costs involved.

Ofcom decided a new tariff structure for non-geographic calls known as the 'unbundled tariff' should be introduced to minimise confusion over pricing. Under the new tariff, the call cost will be unbundled so that consumers will know exactly how much is paid to their phone provider and how much is passed on to other companies. These changes will come into force on 1 July 2015.

Late last year, we issued a consultation looking at the impact on those changes on the existing rules which apply to pricing information given in television and radio broadcasts. This statement sets out amendments we are making to the rules in the Broadcasting Code to take account of the new unbundled tariff. These changes are designed to make the costs of using non-geographic numbers more transparent and simpler for viewers and listeners to understand.

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Section 1

Summary

- 1.1 In October 2014 Ofcom published a consultation entitled *The Use of Non-Geographic Numbers in Broadcasting - Clearer phone costs for viewers and listeners: proposals to amend the Broadcasting Code* (the 'October 2014 consultation').¹
- 1.2 In that consultation we noted that the tariff structure for many non-geographic telephony services² would be changing in 2015³. Under the new tariff structure, known as the 'Unbundled Tariff', consumers will know exactly how much is paid to their phone provider and how much is passed on to other companies.
- 1.3 Non-geographic numbers are often used in broadcast content as a means for viewers and listeners to interact with programmes – e.g. by voting for an outcome in a television programme or participating in a radio call-in show. As a result, in the October 2014 consultation, we looked at the impact of the Unbundled Tariff on the rules in the Broadcasting Code. The October 2014 consultation set out our proposals for changes to the relevant Code rules. This statement sets out our conclusions, in light of the consultation responses we have received.

Background

- 1.4 In 2013 we completed a review of non-geographic call services.⁴ Consumers use these number ranges to call a variety of businesses, financial institutions, helplines, and government agencies to obtain information and to make payments for content, or a product, facility or service.
- 1.5 The evidence we collected during our review demonstrated that, due to the way the market functioned, consumers generally had poor awareness of prices and were deterred from using these numbers. The availability of services on these ranges was also being undermined.
- 1.6 This was a matter of particular concern because, despite the growth of alternative ways to make contact or obtain information (for example internet, email and smartphone apps), the ability to call organisations directly continues to be valued by consumers. For some groups of consumers, particularly vulnerable groups, voice calls are the only practical form of contact for some services.

¹ October 2014 consultation: http://stakeholders.ofcom.org.uk/binaries/consultations/ngn-broadcasting/summary/NGN_condoc.pdf

² Non-geographic numbers are UK telephone numbers starting 03, 05, 070/076, 080, 0843/4, 0845, 0870, 0871/2/3, 09, 116 and 118. For the avoidance of doubt non-geographic number ranges include all number ranges apart from geographic 01 and 02 numbers and mobile 071 to 075 and 077 to 079 numbers. The telephone numbers affected by the Unbundled Tariff are 084, 087, 09 and 118. This footnote was updated on 11 May 2015 to correct an inaccuracy in the version originally published.

³ At the time that the October 2014 consultation was published, we envisaged that the new regime for non-geographic call services would come into effect on 26 June 2015. Following representations from stakeholders that it would be preferable to implement the changes at the beginning of a calendar month, we consulted on a change to the implementation date from 26 June 2015 to 1 July 2015. To avoid confusion, all further references in this statement to the implementation date are to 1 July 2015. See: http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geographic-numbers/statement/NGCS_revised_date_statement.pdf.

⁴ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/final-statement>

- 1.7 Ofcom identified a number of significant consequences from these issues. Some consumers could both under and over use such numbers without fully understanding the costs involved. In the very worst cases, it could potentially lead to vulnerable consumers being prevented from easily accessing socially important services such as helplines or government information. We concluded therefore that there was a case for a reform of the market, including simplification of the system to protect consumers from harm.
- 1.8 As a result, and as part of a series of other measures, we decided to introduce a new tariff structure for non-geographic calls known as 'the Unbundled Tariff'. This involves splitting the part of the call cost paid to a user's phone provider from the part of the call cost paid to cover the costs of call routing, reception and, where it occurs, payment for the service received by the consumer. The effect of these changes will be to simplify the UK's numbering system and allow consumers to gain a better understanding of what different numbers mean, as well as their cost.
- 1.9 The Unbundled Tariff will ensure consumers can know, for the first time, how much of their money is paid to their phone company and how much is passed to others, such as the organisation or service being called.

October 2014 Consultation

- 1.10 Non-geographic numbers are often featured by broadcasters in programming. In our April 2013 policy position on non-geographic numbers⁵ we explained that the current requirements set out in the Code relating to the use of these number ranges by broadcasters were likely to need updating to reflect the changes introduced by the implementation of the Unbundled Tariff. In particular, we noted that the material in the Code about the clarification of cost information for calls to non-geographic numbers and the references to these requirements in accompanying Guidance was likely to be insufficient.
- 1.11 Accordingly, in the October 2014 consultation, we reviewed those aspects of the Code (and accompanying Guidance) which relate to the provision of cost information to consumers and invited the views of stakeholders. We received five responses in total to the October 2014 consultation and had further conversations about our proposals with representatives from a range of broadcast and telecoms stakeholders.

Conclusion

- 1.12 We have concluded that, as proposed in the October 2014 consultation, the Code will require minor amendments to correct minor inconsistencies and ensure the obligations on broadcasters are clear. We have also made changes to the Guidance which accompanies the Code. Specifically:
 - 1.12.1 We have amended rules in Section Nine and Section Ten of the Code to ensure that references to certain telephony or other communications services are accurate;
 - 1.12.2 We have updated Rule 9.30 to make clear that all Unbundled Tariff numbers used in broadcast content must be accompanied by specific cost information;

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part_A.pdf
- See paragraphs 5.48 to 5.53

- 1.12.3 We have amended a note in Section Two of the Code to ensure that it is consistent with the rules in Sections Nine and Ten; and
- 1.12.4 We have amended our Guidance about pricing information to help broadcasters ensure that listeners and viewers are clearly informed about the likely cost of calling an Unbundled Tariff number.
- 1.13 In response to requests from respondents, this statement also provides information to broadcasters planning programming for broadcast around 1 July 2015, to help them ensure that their pricing messaging complies with the Code.
- 1.14 Annex 1 sets out the changes we have made to the Code in Sections Two, Nine and Ten. Annex 2 sets out the changes we have made to our Code Guidance.
- 1.15 The revisions to the Code rules and Guidance will take effect from 1 July 2015.

Section 2

Background

Introduction

2.1 In this section we set out the background to the October 2014 consultation. In particular, we summarise the findings of Ofcom's review of non-geographic call services, the implications of those changes for broadcast content and the issues considered in the current review.

Changes to the regulation of non-geographic numbers

2.2 Non-geographic numbers are telephone numbers used to access a range of services provided by businesses and Government agencies, information and entertainment services and payment services. Unlike geographic numbers (those starting with 01 or 02), non-geographic numbers are not associated with a particular place and can be used nationwide without varying the dialling code.⁶

2.3 We began a review of non-geographic numbers in 2010⁷ in response to concerns that consumers were confused about what these numbers meant and how much calls cost. After detailed analysis and research and consultation with industry we came to the view that consumers were generally unclear about the price of these calls and often overestimated the costs. Our research suggested this made consumers generally suspicious of these numbers and reluctant to use them, which in turn undermined innovation and service availability and, in the worst cases, led to vulnerable consumers being deterred from easily contacting socially important services such as GP surgeries which used non-geographic numbers. We therefore consulted on options for wide-ranging changes to the regulation of non-geographic numbers to address the consumer problems we had identified.⁸

2.4 Following a series of consultations, and having revised our proposals in light of stakeholder comments, in December 2013 we published a final statement setting out our decision ('the 2013 NGCS statement').⁹ We concluded that the significant failures in the market (including service providers' lack of control over retail prices and a lack of incentives on all parties to take account of the effect of their actions on the perception of non-geographic numbers as a whole) meant systematic reform across the non-geographic numbers regime was required.

2.5 Therefore, as well as requiring 116 and 080 numbers (Freephone numbers) to be made free-to-caller from both fixed line and mobiles, we also decided to impose a new 'Unbundled Tariff' structure for many non-geographic calls – in particular the 084, 087, 09 and 118 number ranges. This structure involves the separation of the retail price into:

2.5.1 *an Access Charge* to be paid to the phone company which originates the call; and

⁶ For further information about the different non-geographic number ranges and their uses, see the October 2014 consultation, para 2.3 ff.

⁷ <http://stakeholders.ofcom.org.uk/binaries/consultations/ngnservices/summary/main.pdf>

⁸ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/final-statement.pdf>

- 2.5.2 a *Service Charge* to be paid to the phone company which terminates the call. It is the service charge that may be shared with the service provider, i.e. the company providing a service using the number (such as a broadcaster running a contest for example), to cover or contribute towards their costs.
- 2.6 The introduction of the Unbundled Tariff is intended to create a consistent treatment of all the 'revenue-sharing' number ranges and ensure that consumers know, for the first time, how much of their money is retained by their phone company and how much is passed on to others.
- 2.7 In order to ensure these different charges are made transparent to consumers, we also decided to set rules about the structure of the access and service charges so that consumers could more readily understand and, where appropriate, remember them. These include:
- 2.7.1 the access charge to be set as a simple 'pence per minute' rate with only one access charge applying to each tariff package, for calls to all unbundled non-geographic number ranges;
- 2.7.2 each individual 084, 087, 09 or 118 number to have a single service charge that applies to calls to that number from all fixed and mobile phones;
- 2.7.3 the introduction in most cases of caps on the maximum rate of the service charge;
- 2.7.4 phone companies to publicise the amount of the access charge for each tariff package they offer consumers; and
- 2.7.5 an obligation for organisations and service providers to include their service charge whenever the Unbundled Tariff number is advertised or its use is promoted (i.e. in broadcast advertising and programming).¹⁰

The implications for the Broadcasting Code and programme content

- 2.8 Under the Communications Act 2003 ('the Act'), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes, sponsorship and fairness and privacy. This code is known as the Ofcom Broadcasting Code ('the Code').
- 2.9 The Code contains rules about call pricing information that apply to both TV and radio services as both may feature certain non-geographic numbers for a variety of purposes including participation in live shows.¹¹ Accordingly, because service providers including broadcasters will be required to present the relevant service charge whenever an Unbundled Tariff number is used after 1 July 2015, we have assessed whether amendments to the Code and accompanying Guidance are required.

¹⁰ As set out in the telephone numbering condition in Annex 12 of Ofcom's Simplifying non-geographic calls statement (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)

¹¹ Section Two (Harm and Offence), Section Nine (Commercial References in Television Programming) and Section Ten (Commercial Communications in Radio Programming) each contain rules on call pricing information. These are discussed in greater detail below.

- 2.10 In making our assessment, we have been mindful that the Code already requires the associated call costs for a subset of premium rate telephony services ('PRS')¹² known as "Controlled PRS" ('CPRS')¹³ to be made clear to viewers and listeners. However, following the introduction of the Unbundled Tariff structure, it will be a legal requirement for broadcasters to give audiences specific pricing information when a broader range of non-geographic numbers are used in programmes.¹⁴ This Condition will take effect on 1 July 2015. As a result broadcasters who use an Unbundled Tariff number in their programme material will have to provide information for viewers and listeners about the applicable Service Charge for the number in question.
- 2.11 In practice this means the manner in which consumers are informed about call costs will have to change under the new regime. This is because programme content that includes CPRS is currently required to include call cost descriptions that follow this format:

"This call will cost you X pence per minute on a BT line, other landline providers may vary and calls from mobiles may cost considerably more."

- 2.12 Because the new regulations (mandating the pricing of a broader range of non-geographic telephone services) require access charge and service charge information to be separated we expect the announcement to follow the format of:

"Calls cost [i.e. service charge] per minute plus your phone company's access charge",

or:

"Calls cost [i.e. service charge] per minute plus your network access charge".¹⁵

- 2.13 Broadcasters will have to state the relevant service charge in a prominent position and in close proximity to any Unbundled Tariff number to which they refer on air.¹⁶

Purpose of the October 2014 consultation

- 2.14 In reviewing the existing requirements of the Code relating to call pricing information, we considered that there was no need to change the rules in the Code directly as a result of the introduction of the Unbundled Tariff. This is because, as noted above,

¹² PRS offer some form of content, product, facility or service that is delivered via an Electronic Communications Network and charged to a consumer's bill for Electronic Communications Services. PRS may be accessed by way of a conventional voice call, but also in other ways, such as SMS, PC, mobile phone downloads or interactive digital TV. Common forms of PRS include TV voting lines, competitions, adult entertainment, chat lines, business information services, technical helplines, mobile phone ringtones and game downloads, horoscopes and directory enquiry services. For the purposes of the Broadcasting Code, references to 'PRS' are limited to 'Controlled PRS' – see footnote 13 below. Controlled PRS tend to cost more than a normal phone call or text message.

¹³ 'Controlled PRS' (such as 09, 087, and 118 number ranges and mobile SMS and voice shortcodes) are those services which are subject to Ofcom's PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with section 120 of the Act. See Annex 10 to the 2013 NGCS statement.

¹⁴ The changes are set out in the Telephone Numbering Condition binding non-providers and General Condition 14.10 (applying to Communications Providers – "phone providers" – using these number ranges). These can be found in Annex 12 and Annex 8 of the 2013 NGCS statement respectively.

¹⁵ Further information about call pricing announcements is set out in Section Three of this statement.

¹⁶ Further information about transitional wording and implementation is set out in Section Three of this statement.

the Code already contained provisions on the use in programme content of CPRS¹⁷ – which are subject to the rules set out in the PhonepayPlus Code of Practice¹⁸ and for which Ofcom has back-stop powers – and other services used in programme content which also use revenue-sharing arrangements.¹⁹ The effect of the existing rules has been that broadcasters may only charge audiences to participate or interact with a TV or radio programme by means of CPRS or other service based on similar revenue-sharing arrangements. In cases where such a service has been used, the broadcaster has been obliged to inform the audience of the associated call/text costs.

- 2.15 However, while reviewing the rules to determine whether any changes were needed as a result of the new tariff structure, we noted some technical inaccuracies in references to telecommunications services and regulation. We also noticed that different parts of the Code placed marginally different requirements on broadcasters to inform listeners and viewers about the likely costs of interacting with a programme. For example, although the rules in Section Two of the Code set out requirements for broadcast competitions and voting using CPRS, there were no references to other services based on similar revenue-sharing arrangements. In contrast, the radio rules in Section Ten permitted audience interaction via a range of different means in programming provided that a commercial reference is appropriately signalled and transparent to the audience.
- 2.16 We considered it is sensible to amend certain wording in Sections Two, Nine and Ten of the Code in order to ensure the obligations on broadcasters are clear, consistent where they need to be, and accurate.
- 2.17 In addition, because the effect of the Unbundled Tariff will mean a change to the information that broadcasters include about such services in their programming, we decided to amend the Guidance that accompanies Sections Two, Nine and Ten of the Code to reflect the resulting changes.
- 2.18 In summary, it was Ofcom's view, as set out in the October 2014 consultation, that:
- 2.18.1 references to PRS in the Code needed to be amended to reflect more accurately when the relevant rules actually refer to a subset of PRS known as Controlled PRS (i.e. those PRS regulated by PhonepayPlus);
 - 2.18.2 Rule 9.26 within Section Nine of the Code ('Commercial References in Television Programming') which set out the methods by which broadcasters may charge for audience participation/interaction (i.e. CPRS or other telephony services in which generated revenue is shared) needed to be updated to reflect accurately the types of services the rule is intended to permit;
 - 2.18.3 Rule 9.30 within Section Nine of the Code ('Commercial References in Television Programming') needed to be updated to refer to the costs associated with any use of a non-geographic number (including CPRS) for the purposes of audience participation;

¹⁷ See footnote 13 above.

¹⁸ <http://code.phonepayplus.org.uk/>

¹⁹ The term 'revenue-sharing arrangements' in the Broadcasting Code refers to revenue derived from viewers and listeners as a result of paid-for participation/interaction which results in a financial benefit for the licensee (or a named beneficiary) in addition to, for example, the platform owner or service provider.

- 2.18.4 the rules in Section Ten of the Code ('Commercial Communications in Radio Programming') needed to be amended to reflect accurately the types of services the rule is intended to permit and include an accompanying note directing broadcasters to more detailed information in the Code Guidance;
 - 2.18.5 the reference to PRS in the accompanying note to Section Two of the Code ('Harm and Offence'), which refers to broadcast competition and voting practices needed to be updated to refer to other services in which the generated revenue is shared; and
 - 2.18.6 the Code Guidance to Sections Two, Nine and Ten of the Code needed to be amended to reflect the new detailed requirements associated with the use of Unbundled Tariff numbers.
- 2.19 Ofcom is mindful that television operates within a different statutory framework to radio and, in particular, that radio broadcasting is not subject to the requirements of the AVMS Directive (since this applies only to audiovisual media services) and has very limited restrictions on the level of third party commercial involvement permitted in programming.²⁰ In reviewing the relevant Code rules and Guidance, we have not sought to reassess the differences which exist between the rules which apply to television and radio services. As a result, the amendments proposed in the October 2014 consultation were limited to those rules which require broadcasters to ensure appropriate call pricing information is included where non-geographic numbers are used in broadcast content.²¹
- 2.20 Section Three of this statement sets out the responses which we received to these proposals and the decisions which we have made.
- 2.21 The revisions to the Code and Guidance (including the requirement for broadcasters to make clear the relevant call costs) will take effect from 1 July 2015.

²⁰ <http://stakeholders.ofcom.org.uk/binaries/consultations/724339/statement/statement.pdf>

²¹ In Broadcast Bulletin 186 (dated 18 July 2011), Ofcom announced the introduction of a pilot period during which broadcasters making on-air references to apps as a means of paid-for viewer participation or interaction were also permitted to make on-air references to directly linked website interfaces or webpages as an alternative route by which the viewer could pay for the participation or interaction. The pilot period was subsequently extended until 31 December 2014. Once we have completed the present exercise, Ofcom will review the extent to which broadcasters used the pilot period to trial different forms of audience participation. Depending on the outcome of our review, a further consultation limited to the remit and application of Rule 9.26 may be necessary.

Section 3

Consultation Responses and Assessment

Introduction

- 3.1 In the October 2014 consultation we set out proposals for amendments to the Code and Guidance designed to clarify broadcaster obligations when the Unbundled Tariff comes into force in July 2015.
- 3.2 In this section we set out the responses we received from stakeholders to our proposals, offering our view on the arguments presented and the conclusions we have reached.

Summary of Responses

- 3.3 We received five responses in total to the October 2014 consultation. Three respondents requested that their responses be kept confidential. Non-confidential responses were received from a private individual and the BBC. Subsequently, we had further conversations about our proposals with representatives from a range of broadcast and telecoms stakeholders and the Association for Interactive Media and Entertainment ('AIME').

Proposed amendments to Section Two of the Code: Harm and Offence

- 3.4 The rules in Section Two of the Code serve to ensure generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- 3.5 Section Two includes rules – Rule 2.13 to 2.16 – which are designed to protect audiences from harm as a result of participation in competitions and voting. These rules require all competitions and votes to be run fairly and honestly. Broadcasters running competitions and votes in effect invite viewers and listeners to take part in schemes on terms that would be assumed to be equitable and free of deception. It is therefore of paramount importance that all aspects of a competition or a vote are clear and fair, including the information given to viewers and listeners about the costs of interaction as this may affect their decision to participate.

Question 1: Cross-references to additional rules

- 3.6 A note following Rule 2.16 refers readers to corresponding rules in Sections Nine and Ten. The note currently refers only to competitions and voting involving the use of PRS (i.e. there is no reference to other services in which the revenue generated is shared between the broadcaster and other relevant parties). Given that paid-for audience participation may be achieved through services other than CPRS, we proposed to amend the note in Section Two to reflect that position.²²

²² In this document, proposed and confirmed additions to the text of the Code and associated notes and Guidance are signalled by the use of grey shaded text while proposed and confirmed deletions are signalled by the use of grey shaded and struckthrough text.

Note:

For broadcast competitions and voting that involve the use of premium rate services (PRS) Controlled Premium Rate Services or other communications services for which the revenue generated is shared between the broadcaster and other relevant parties, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

- 3.7 In Question 1, we asked stakeholders if they agreed with our proposed amendment to the note following Rule 2.16.

Responses to Question 1

- 3.8 One respondent stated that it broadly agreed with the proposed amendment to the note following Rule 2.16.
- 3.9 However, the BBC considered that the expanded note was inaccurate because its use of premium rate services was not intended to generate revenue. It said that, except in the case of charity appeals, it sought to use the lowest viable rate, with the result that, once the service provider and network operator had deducted their share, little or no revenue remained. It explained that in those cases in which there is a remainder, any funds received by the BBC were donated to charity.
- 3.10 A third respondent suggested a revision which it considered would both simplify and expand the note:

Note:

For broadcast competitions and voting that involve the use of premium rate telephony services (PRS) all viewer interactions with a programme (including broadcast competitions and voting) that involve a charge to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

- 3.11 This respondent considered its proposal served:
- 3.11.1 to clarify that Rule 9.26 applied to all interaction with programmes and not just broadcast competitions and voting; and
 - 3.11.2 to avoid “any confusion around the rationale for referring to CPRS but not wider PRS and not referring to non-geographic services which are now also referred to in Rule 9.30”.

Ofcom’s view

- 3.12 The amendment proposed in the October 2014 consultation was intended to clarify the fact that – for both television and radio broadcasters – paid-for audience participation may be achieved through services other than CPRS.

- 3.13 However, we acknowledge the point made by the BBC that broadcasters may not always benefit from revenue generated by the use of such services. We also acknowledge that forms of audience participation and interaction with programming permitted under the rules in Section Nine of the Code are not limited to competitions and voting. Further, and on reflection, we consider that the reference to ‘other communications services’ initially proposed could be viewed as broadening the scope of Rule 9.26 to permit television broadcasters to promote paid-for audience interaction via mechanisms other than telephony services when this was not the intention of this or indeed, any of the amendments proposed in the October 2014 consultation.
- 3.14 Accordingly, taking into account the responses referred to above, the revised note under Rule 2.16 in Section Two will state:

Note:

For ~~broadcast competitions and voting that involve the use of premium rate telephony services (PRS)~~ circumstances in which audience participation or interaction with programming (including broadcast competitions and voting) may involve a cost to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

Proposed amendments to Section Nine of the Code: Commercial References in Television Programming

- 3.15 Section Nine of the Code contains a set of principles and general overarching rules which apply to all commercial references in television programming. It also contains specific rules for different types of commercial references (e.g. product placement, programme-related material and sponsorship) which are intended to ensure that the principles of editorial independence and distinction between advertising and editorial content are maintained. Section Nine also contains rules specifying the responsibilities broadcasters have to protect audiences from the risk of financial harm.

Question 2: definition of CPRS

- 3.16 Section Nine contains specific rules which relate to the use of CPRS and other telephony services in which the revenue generated is shared between relevant parties (potentially including the broadcaster and service provider).
- 3.17 The rules on audience participation and interaction in Section Nine are intentionally limited to telephony services to ensure that audience interaction with programmes via self-standing proprietary mechanisms (e.g. money transfer instruments and social media) are excluded. The purpose of this general restriction is to avoid paid-for interaction being essentially just the sale of a service: where the charging is accomplished by the means of communication, the charge is bound up with the interaction, such as a talent show vote, and is not a separate transaction. The general rule therefore prevents, for example, the use of credit cards to pay for the chance to interact in or with a show’s discussion, vote or competition. Similarly,

although the TV rules permit the use of CPRS and apps²³ to charge the audience for participation, they do not normally²⁴ allow voting credits and interaction to be purchased via a self-standing proprietary platform like a website.

- 3.18 The text accompanying the rules included a note defining PRS as “those regulated by PhonepayPlus”. In the October 2014 consultation we proposed an amendment to that note to clarify on which services paid-for audience participation is permitted i.e. CPRS, as opposed to all PRS:

Use of Controlled Premium Rate telephony Services (PRS)

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

~~In this section, premium rate telephony services (PRS) are those regulated by PhonepayPlus.~~

- 3.19 In Question 2 we asked stakeholders if they agreed with our proposed amendment to the note.

Responses to Question 2

- 3.20 One respondent was content with the proposed definition.
- 3.21 The BBC considered that, by defining CPRS as those regulated by PhonepayPlus, our proposal introduced a “fragmentary definition and a circular reference”. It suggested “an actual definition of those services in the Code, as opposed to a reference to PhonepayPlus’ remit, would allow for more clarity as well as avoid the risk of PhonepayPlus, in turn, describing its scope by way of the definition of CPRS”.
- 3.22 A third respondent considered the definition was not entirely clear as non-CPRS are subject to the PhonepayPlus Code of Practice on a voluntary basis.

Ofcom’s view

- 3.23 We do not consider adding a detailed definition of CPRS in the Code would be appropriate given the Code is intended to be an easy to comprehend tool for broadcast compliance officers. The revised note makes clear that further detail is supplied in the Guidance that accompanies the Code and which in turn refers readers to the PhonepayPlus Code of Practice where a detailed definition of CPRS is available.
- 3.24 In addition, although we note the third respondent’s point about voluntary regulation, it remains the case that only CPRS are formally regulated by PhonepayPlus through

²³ Our guidance to Section Nine makes clear that, in principle, the use of apps to charge the audience for participation is an acceptable form of telephony service of the purposes of Rule 9.26. The guidance defines apps as *software applications downloaded to mobile phones and related devices*. This applies in cases where the app itself is paid-for, or where the app is free but enables payment to be taken – for example to purchase a number or block of votes or competition entries.

²⁴ See footnote 21 above.

its Code of Practice. Other PRS services which comply with the PhonepayPlus Code do so on a voluntary basis.

- 3.25 It remains our view, therefore, that the definition of CPRS proposed in the October 2014 consultation is appropriate.

Question 3: Proposed amendments to Rule 9.26

- 3.26 Rule 9.26 currently states:

9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements.

- 3.27 A key characteristic of PRS is that there are revenue-share arrangements in place between the provider of the electronic communications service and the provider of the content, product, facility or service. This is because the charges are made to a consumer's phone bill or pre-pay account and the revenue is shared by various parties in turn within the value chain (e.g. the consumer's telephone company, the telephone company that terminates the call, the intermediary company that may be offering a technical platform, the party providing the service etc). In light of the nature of the arrangements broadcasters may have in place with platform providers or service providers, the above definition may not strictly be fulfilled. However, the existing policy under the Code permits broadcasters to use other telephony services for audience participation, as long as any revenue generated is shared, for example with the platform owner or service provider. Therefore we proposed an amendment to the wording of Rule 9.26, to ensure the terminology is consistent with existing telecommunications policy:

9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of controlled premium rate telephone services or other telephony services based on similar revenue-sharing arrangements for which the revenue generated is shared between the broadcaster and other relevant parties.

- 3.28 Importantly, our proposed amendment was not intended to change the scope of Rule 9.26: TV broadcasters remain restricted to using CPRS or other telephony services based on similar revenue-sharing arrangements as methods of paid-for audience interaction.
- 3.29 In Question 3 we asked stakeholders if they agreed with our proposed amendments to Rule 9.26.

Responses to Question 3

- 3.30 One respondent agreed with Ofcom's proposed amendment to Rule 9.26.
- 3.31 A second respondent disagreed. It considered that Ofcom should bring the rule up to date by allowing for payment by services other than telephony services. It also

queried “the rationale for excluding the ability of broadcasters to charge viewers via a PRS which... did not amount to a CPRS”. This respondent and the BBC stated that our proposed wording was inaccurate because broadcasters would not always receive a share of funds (e.g. in the case of charity appeals).

Ofcom’s view

- 3.32 The rules on audience participation and interaction in Section Nine were intentionally limited to telephony services to ensure that audience interaction with programmes via self-standing proprietary mechanisms (e.g. money transfer instruments and social media) were excluded. When the rules were introduced in 2009, we considered this was an important way of ensuring that any charge for voting in a talent show, for example, was integrated with the act of participation by the audience. At that time we concluded that the use of paid-for third party methods (such as Facebook voting) too closely resembled the sale of a service to be viewed as a form of direct audience interaction. The aim of Rule 9.26 was therefore to balance the benefits that viewers and broadcasters could derive from differing means of paid-for interaction with due protections intended to prevent programmes from becoming vehicles for the sale of services.
- 3.33 However, we are mindful that significant changes in both mobile technology and usage have occurred since 2009. A pilot period, during which broadcasters were permitted to make on-air references to alternative paid forms of participation, was ongoing at the time our consultation document was published and we made clear our intention then to review the extent to which broadcasters had used the pilot period before deciding whether a further consultation on the remit and application of Rule 9.26 was necessary.²⁵ We do not, therefore, intend to change the scope of Rule 9.26 at this time.
- 3.34 We would like to take this opportunity to clarify, however, that the term “other telephony services” may include PRS numbers which could involve revenue sharing but which are not CPRS – e.g. 084 numbers. However, in light of the fact that broadcasters would not always receive a share of any funds generated, we have further amended Rule 9.26. It will now state:

9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of controlled premium rate telephone services or other telephony services based on similar revenue-sharing arrangements for which the revenue generated is shared between relevant parties.

Question 4: Proposed amendments to Rule 9.30

- 3.35 Rule 9.30 currently states:

9.30 The cost to viewers for using premium rate telephony services must be made clear to them and broadcast as appropriate.

Note:

Licensees should refer to the guidance for further details on the application of

²⁵ See October 2014 consultation, footnote 24.

this rule, as well as guidance to relevant associated rules (see, in particular, the guidance to Rules 2.13 to 2.16).

- 3.36 In the October 2014 consultation we noted that Rule 9.30 had only required that viewers were informed of the associated call costs that apply to CPRS, rather than the broader set of numbers covered by the Unbundled Tariff. As some Unbundled Tariff numbers are not regulated by PhonepayPlus, they do not fall within the definition of CPRS. Given that, from 1 July 2015, all Unbundled Tariff numbers used in broadcast content must be accompanied by specific cost information, we proposed an amendment to Rule 9.30 to alert broadcasters to that requirement:

Non-geographic call costs

9.30 The cost to viewers for using ~~premium rate telephony services~~ non-geographic telephony services must be made clear to them and broadcast as appropriate.

Note:

Non-geographic telephony services are those telephone numbers that are not linked to a specific location. Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see, in particular, the guidance to Rules 2.13 to 2.16).

- 3.37 In Question 4 we asked stakeholders if they agreed with our proposed amendment to Rule 9.26.

Responses to Question 4

- 3.38 One respondent agreed with Ofcom's proposed amendment to Rule 9.30.
- 3.39 The BBC stated that it had no objections to the proposed requirement for broadcasters to make clear the cost of non-geographic telephony services. However, it was concerned that, whereas cost announcements for CPRS would continue to be regulated by PhonepayPlus, "the cost wording for all other non-geographic telephony services will be regulated directly by Ofcom." The BBC considered "this potential duality of regulatory frameworks could lead to duplication or contradictions."
- 3.40 A third respondent considered that the different terminology used in Sections Two, Nine and Ten, was liable to create confusion and would require further amendment once the pilot period waiving Rule 9.26 for broadcasters, had been reviewed by Ofcom. This respondent also stated that it was unclear how to apply Rule 9.30, "given that, under the other Rules, we can only invite viewers to interact via CPRS or other telephony services involving revenue sharing."

Ofcom's view

- 3.41 Although we note the BBCs concern about the potential for dual regulation, the amendment does not change the scope of either PhonepayPlus's regulatory remit (which relates to CPRS services) or Ofcom's (which for present purposes relates to cost announcements in broadcast content).

- 3.42 Further, Ofcom acknowledges that there are marginal differences in the terminology used in Sections Two, Nine and Ten. However, this is because the requirements vary depending on both the specific method of audience participation to which they refer (e.g. CPRS) and on whether the relevant rules apply to television, radio or both mediums. The present consultation was intended as a limited exercise to ensure that the rules in the Code appropriately reflected the requirements of the Unbundled Tariff and to update them where necessary. We have not sought, therefore, to examine the case for greater harmonisation in this area at this time.
- 3.43 Finally, it is not the case that the Code states television broadcasters can only invite viewers to interact via CPRS or other telephony services involving revenue sharing. Rule 9.26 makes clear that where a broadcaster invites viewers to participate or interact with programming “it **may only charge** for such participation or interaction by means of [CPRS or other revenue sharing telephony services]” (emphasis added). If television broadcasters wish to utilise other numbers, they are entitled to do so but may not use them to charge (i.e. receive revenue from viewers) for participating or interacting with programming. Rule 9.30 simply requires the cost of calling of non-geographic numbers to be “made clear” to audiences and broadcast “as appropriate”. Therefore, the wording of any relevant cost message, including the decision to broadcast a cost message around free or low rate numbers would remain within the broadcasters’ discretion, as is currently the case.²⁶
- 3.44 It remains our view, therefore, that the amendment to Rule 9.30 proposed in the October 2014 consultation is appropriate.

Proposed amendments to Section Ten: Commercial Communications in Radio Programming

- 3.45 The rules in Section Ten are designed to maintain an appropriate level of consumer protection for listeners by ensuring that all commercial arrangements relating to broadcast material are signalled, and therefore transparent.
- 3.46 Unlike Section Nine, the rules in Section Ten permit audience interaction via proprietary platforms – such as web-based social media platforms – in addition to telephony services. However, in all cases where a radio broadcaster uses a proprietary platform or telephony means of charging, the commercial reference must be appropriately signalled and transparent to the audience.

Question 5: Definition of CPRS

- 3.47 As with Sections Two and Nine, while Section Ten does not currently explicitly refer to ‘CPRS’, the manner in which the Code defines PRS (i.e. those PRS regulated by PhonepayPlus) meant that in practice Rules 10.9 and 10.10 refer to CPRS. As with Sections Two and Nine, we proposed adding a note to Section Ten to make clear that references to “premium rate telephony services” were to CPRS as opposed to all PRS.

Controlled Premium Rate and similar services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance

²⁶ Additional guidance for broadcasters about possible wording to be used in connection with Unbundled Tariff numbers is discussed below, after paragraph 3.68.

for further details about the terms used in this section.

3.48 In Question 5 we asked stakeholders if they agreed with our proposed note.

Responses to Question 5

3.49 One respondent agreed with Ofcom's proposed note.

3.50 The BBC reiterated its response to Question 2 (discussed above at paragraph 3.21) that, by defining CPRS as those services regulated by PhonepayPlus, our proposal introduced a "fragmentary definition and a circular reference". It suggested "an actual definition of those services in the Code, as opposed to a reference to PhonepayPlus' remit, would allow for more clarity as well as avoid the risk of PhonepayPlus, in turn, describing its scope by way of the definition of CPRS".

Ofcom's view

3.51 As stated above (see paragraph 3.23), we do not consider adding a detailed definition of CPRS in the Code would be appropriate given the Code is intended to be an easy to comprehend tool for broadcast compliance officers. The revised note makes clear that further detail is supplied in the Guidance that accompanies the Code and which in turn refers readers to the PhonepayPlus Code of Practice where a detailed definition of CPRS is available.

3.52 It remains our view, therefore, that the note proposed in the October 2014 consultation is appropriate.

Question 6: Amendments to Rule 10.10

3.53 As noted already in relation to Question 5, unlike Section Nine, the rules in Section Ten permit paid-for audience interaction via proprietary platforms – such as web-based social media platforms – in addition to telephony services. However, in all cases where a radio broadcaster uses either a proprietary platform or telephony means of charging, the commercial reference must be appropriately signalled and transparent to the audience.

3.54 In the October 2014 consultation we proposed an amendment to the wording of Rule 10.10, similar to that proposed to Rule 9.26 above, to ensure the terminology used to describe sharing of revenue was consistent with existing telecoms regulation, while maintaining the differences between the rules for television and radio.²⁷ Our proposed amendment stated:

10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between the broadcaster and other relevant parties, ~~services based on similar revenue-sharing arrangements,~~ must be made clear to them and broadcast as appropriate.

²⁷ See paragraph 3.27f above.

- 3.55 In Question 6 we asked stakeholders if they agreed with our proposed amendment to Rule 10.10.

Responses to Question 6

- 3.56 One respondent agreed with Ofcom's proposed amendment to Rule 10.10.
- 3.57 The BBC, however, considered that it was unclear whether the reference to "other communications services" was meant to cover mobile apps (which it understood to be the case for Section Nine) or in this case to include non-geographic numbers other than CPRS promoted in radio programming.

Ofcom's view

- 3.58 Ofcom's current Guidance makes clear that 'apps' (i.e. software application downloaded to mobile phones and related devices) are presently permitted forms of participation or interaction in radio programming and will continue to be permitted after 1 July 2015. However, unlike Section Nine, the rules in Section Ten permit audience interaction via proprietary platforms – such as web-based social media platforms – in addition to telephony services, hence the scope of the rule is much wider than its TV equivalent in Section Nine. In Ofcom's view the difference is clear once readers consider the relevant rules in Sections Nine and Ten of the Code alongside the accompanying Guidance.
- 3.59 However, in light of the point made by the BBC and another party in their submissions about Question 3²⁸ – that broadcasters would not always receive a share of funds – we have amended Rule 10.10 so that it states:

10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between relevant parties, ~~services based on similar revenue-sharing arrangements,~~ must be made clear to them and broadcast as appropriate.

Question 7: Note referring readers to Ofcom's Guidance

- 3.60 Finally, in the October 2014 consultation we considered that it would be helpful to radio broadcasters to include a reference in the Code directing readers to the detailed Code Guidance which contains more information about the application of the rule. We therefore proposed to amend Section Ten to include a note following Rule 10.10 which states:

Note:
Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

²⁸ See paragraph 3.31 above.

Responses to Question 7

- 3.61 The BBC and another respondent agreed with Ofcom's proposal to include a note directly after Rule 10.10. No respondent objected to the note.

Ofcom's view

- 3.62 It remains our view that the note proposed in the October 2014 consultation is appropriate.

Additional points raised by respondents

- 3.63 In the October 2014 consultation document, we published a set of proposed amendments to our Guidance to Sections Two, Nine and Ten of the Code. These were intended to provide further information to broadcasters about the use of Unbundled Tariff numbers in broadcast content.²⁹
- 3.64 Although the Code does not stipulate how broadcasters should make pricing information clear to consumers in order to secure compliance with the Code, we were mindful that the new regulations require access charge and service charge information to be separated. As a result, we set out in the October 2014 consultation our intention to amend our Guidance to advise broadcasters to use the following message in a prominent position and in close proximity to any Unbundled Tariff number to which they referred on air:
- “Calls cost [i.e. service charge] per minute plus your phone company’s access charge.”*
- 3.65 One respondent asked for clarification as to whether the suggested call cost wording in the Guidance was mandatory or whether it was possible to use alternative wording. The respondent added that it would welcome the insertion of term ‘*or similar*’ in the Guidance after the suggested call cost message so as to give it the flexibility to use wording that in its view would be clearer to viewers.
- 3.66 A second respondent pointed out that broadcast content was frequently recorded many months in advance of broadcast. This included programming containing competitions which would straddle the date on which the new requirements came into force. The second respondent also stated that the cost of re-editing older programming to make it consistent with the Guidance could be prohibitive in some cases. The second respondent therefore requested:
- 3.66.1 For older programmes, a grace period for competitions running over 1 July to complete, during which it would make full pricing information available in contest terms and conditions and ensure its customer care team would be fully briefed to assist consumers.
- 3.66.2 For programmes due for transmission around 1 July but yet to be recorded, permission to use an alternative form of words which stated the unbundled price – e.g. *“Calls from BT landlines will cost no more than X plus network extras. Other networks may vary.”*

²⁹ See the October 2014 consultation, Annex 6.

- 3.66.3 Going forward, permission to use different wording – “*Calls cost X plus a network charge*” – which it argued was consistent with the terminology in use and understood by consumers for SMS services.
- 3.67 Following the consultation, Ofcom received a further set of proposals from AIME on behalf of its members:
- 3.67.1 During “the week of transition (and potentially the week before or after any 2 week competition)... the call to action should say ‘*Calls cost no more than X plus your network access charge*’” where X was equivalent to the pre-unbundled cost (i.e. the service charge and access charge). From 1 July, viewers ringing in would hear a pre-call announcement where X would be replaced by the actual service charge.
- 3.67.2 After 1 July, the use of new wording stating “*Calls cost X plus your network access charge*”.
- 3.67.3 In older content repeated after 1 July, visual references to pricing would be updated (e.g. via an on-screen strap) but audio referencing to the old bundled tariff would not (i.e. in some cases a presenter might still state the call cost from a BT landline). To prevent confusion, audience members who responded would hear a pre-call announcement with the current unbundled pricing.

Ofcom’s view

- 3.68 Although we noted respondents’ proposals to amend the wording we had proposed for the Guidance, it is important to make clear that the wording represents Ofcom’s recommendation: it is for broadcasters to determine whether alternative forms of cost messaging that they wish to use are compliant with requirements. However, we would emphasise that our wording is designed to help broadcasters ensure that listeners and viewers are in no doubt as to the likely cost of the relevant call.
- 3.69 Nevertheless, having considered the points made by respondents we have amended our Guidance to state that broadcasters may wish to use **either** of the following options:
- “*Calls cost [i.e. service charge] per minute plus your phone company’s access charge.*”
- Or:
- “*Calls cost [i.e. service charge] per minute plus your network access charge.*”
- 3.70 In order to provide assistance to broadcasters planning programming for broadcast around 1 July, in deciding whether or not the pricing messaging used by broadcasters represented a breach of the Code we would expect to take the following into account in considering all the relevant circumstances:
- 3.70.1 whether a competition ran across the go-live date of 1 July;
- 3.70.2 whether the messaging “*Calls cost no more than X plus your network access charge*” was used for a period lasting no longer than two weeks on either side of 1 July; and

- 3.70.3 whether callers ringing after 1 July heard a free announcement setting out accurate pricing details.
- 3.71 In addition, although we understand that the associated costs of re-editing pre-recorded content can be significant, we do not consider the presence of inaccurate on-screen pricing or contradictory visual and audio pricing information is likely to be acceptable, regardless of whether measures have been put in place to inform consumers via other means.

Our conclusions

- 3.72 We have carefully considered the views we received from respondents to the consultation in making our assessment of appropriate amendments to the Code. Annex 1 below sets out the changes we have made to Sections Two, Nine and Ten. Annex 2 sets out the changes we have made to our Code Guidance.
- 3.73 The revisions to the Code rules and Guidance will take effect from 1 July 2015.

Annex 1

Final Code amendments

The amendments³⁰ to the Code set out below will come into force on 1 July 2015. Until that date, the rules in the March 2013 edition of the Code (as updated in March 2015) remain in force.³¹

Amendments to Section Two: Harm and Offence

Broadcast competitions and voting

- 2.13 Broadcast competitions and voting must be conducted fairly.
- 2.14 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.
- 2.15 Broadcasters must draw up rules for a broadcast competition or vote. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.
- 2.16 Broadcast competition prizes must be described accurately.

(See also Rule 1.30 in Section One: Protecting the Under-Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For broadcast competitions and voting that involve the use of premium rate telephony services (PRS) circumstances in which audience participation or interaction with programming (including broadcast competitions and voting) may involve a cost to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

Meaning of "broadcast competition":

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize.

Meaning of "voting":

Features in a programme in which viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

³⁰ Amendments to the Code as signalled as follows:

XXX = new text
XXX = unchanged text
XXX = deleted text

³¹ The latest version of the Code can be found at:
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

Amendments to Section Nine: Commercial references in Television Programming

Use of Controlled Premium Rate telephony Services (PRS)

Note

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

~~In this section, premium rate telephony services (PRS) are those regulated by PhonepayPlus.~~

9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of controlled premium rate telephone services or other telephony services ~~based on similar revenue-sharing arrangements~~ for which the revenue generated is shared between relevant parties.

9.27 Controlled premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
- b) they fall within the meaning of programme-related material.

Note:

Each of the above exceptions is subject to the undue prominence rule.

9.28 Where a controlled premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose.

9.29 Any use of controlled premium rate telephone numbers must comply with the Code of Practice issued by PhonepayPlus.

Non-geographic call costs

9.30 The cost to viewers for using ~~premium rate telephony services~~ non-geographic telephony services must be made clear to them and broadcast as appropriate.

▪ Note:

Non-geographic telephony services are those telephone numbers that are not linked to a specific location. Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see, in particular, the guidance to Rules 2.13 to 2.16).

Proposed amendments to Section Ten: Commercial References in Radio

Controlled Premium Rate and similar services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

- 10.9 Any use of controlled premium rate telephony services in programming must comply with the Code of Practice and any additional broadcast-related requirements issued by PhonepayPlus.
- 10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between relevant parties, ~~services based on similar revenue-sharing arrangements,~~ must be made clear to them and broadcast as appropriate.

Note:

Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

Annex 2

Amendments to Code Guidance

The amendments to the Code set out in Annex 1 above will come into force on 1 July 2015. Until that date, the rules in the March 2013 edition of the Code (as updated in March 2015) remain in force.³²

The text below contains amendments³³ to the Guidance on Section Nine³⁴ and Section Ten³⁵ designed to help broadcasters preparing for the changes to the Code described above.

Marked up Section 2 (Harm and Offence) Guidance

Pricing

This subject is of great importance. Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable. The cost to viewers for using Controlled Premium Rate telephony Services (CPRS) or other communications services, in which the revenue generated is shared between relevant parties, must be made clear to them and broadcast as appropriate. Such information should always be delivered in a way that is clear and comprehensible to the audience.

Controlled PRS are those services which are subject to Ofcom's PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with Section 120 of the Act.

Controlled PRS are premium rate goods and services that viewers can buy by charging the cost to their phone bill or pre-pay account. ~~these~~ These services tend to cost more than a normal phone call or text message and are regulated by PhonepayPlus.

Other telephony services include Unbundled Tariff Numbers (UTN) which are those telephone numbers starting 084, 087, 09 and 118.³⁶

The principle underpinning UTN ensures listeners and viewers are aware how much of their money is paid to their phone company and how much is passed to others (such as the organisation or service being called). The 'unbundled tariff' structure involves the separation of the retail price into two separate elements consisting of:

³² The latest version of the Code can be found at:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

³³ Amendments to the Guidance as signalled as follows:

XXX = new text

XXX = unchanged text

XXX = deleted text

³⁴ The Guidance to Section Nine of the Code can be found at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>.

³⁵ The Guidance to Section Ten of the Code can be found at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section10.pdf>.

³⁶ Some UTNs are also classed as controlled PRS, specifically 087 numbers with a service charge higher than 5.833p (excluding VAT), 09 and 118 numbers.

- a) the Access Charge: which is paid to the phone company originating the call; and
- b) the Service Charge: which is paid to the phone company terminating the call and may be shared with the company providing the service.

The Access Charge is a single, pence per minute amount, for each consumer's tariff package and is the same across all UTNs. Consumers can find out their Access Charge through their phone provider. Each individual 084, 087, 09 or 118 number has a single service charge that applies to calls to that number from all fixed and mobile phones.

The Service Charge is the charge linked to each individual 084, 087, 09 or 118 number. It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

Broadcasters are required to give viewers specific pricing information when UTN are used; in particular broadcasters are required to make clear in a prominent position and in close proximity to the UTN, the relevant Service Charge³⁷. Ofcom advises that one of the following messages are used, either:

"Calls cost [i.e. service charge] per minute plus your phone company's access charge",

or:

"Calls cost [i.e. service charge] per minute plus your network access charge".

Further information on the unbundled tariff structure is available at: [URL to UK Calling website]. Broadcasters may want to refer to this website in the terms and conditions attached to the use of the relevant UTN.

~~105. Ofcom does not believe that cost messages in some programmes have placed sufficient stress on the higher charges likely to be incurred by some users of non-BT networks, particularly the mobile networks. Rather than merely saying that 'networks/mobiles may vary', Ofcom advises strongly that a more emphatic message is used, for example:~~

- ~~• *"Calls cost Xp from BT lines. Calls from other networks and from mobiles may vary and can cost a lot more. Contact your provider for details."*~~

~~106. An alternative approach likely to be acceptable would be the use of a maximum mobile charge — an 'up to' price — where that can be established. Whatever form of words is chosen it should indicate that calls from mobiles may be significantly more expensive than the benchmark BT price.~~

³⁷ The Telephone Numbering Condition binding non-providers is set out in the condition in Annex 12 of the 2013 NGCS statement, and the requirement for Communications Providers (i.e. "phone providers") is set out in the amended General Condition 14 in Annex 8 (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)

Marked up Section Nine Guidance

Use of Controlled Premium Rate telephony Services (PRS)

Note

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section. In this section, premium rate telephony services (PRS) are those regulated by PhonepayPlus

Rule 9.26 Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements for which the revenue generated is shared between relevant parties.

This rule serves to ensure that paid-for interaction between a viewer and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. In other words, it seeks to prevent participation in programming by payment methods like credit or debit cards, for example. In short, it ensures that a distinction is maintained between editorial content and advertising, and that programmes do not become vehicles for carrying advertising.

Controlled PRS (CPRS) are those services which are subject to Ofcom's PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with Section 120 of the Act.

Controlled PRS are premium rate goods and services that viewers can buy by charging the cost to their phone bill or pre-pay account. ~~these~~ These services tend to cost more than a normal phone call or text message and are regulated by PhonepayPlus.

"Apps" and paid-for audience participation in programming

"Apps" are software applications downloaded to mobile phones and related devices.

It has become reasonably common for some broadcasters to include references within their programmes to free apps. These apps include, for example, offers of programme-themed games, or those that enable users to access behind-the-scenes footage of a particular programme. In general, this type of app would meet the Code's definition of programme-related material (PRM), and Rules 9.31 and 9.32 apply.

However, this guidance addresses the suitability under the Code of apps as a way to charge the audience to participate in programming, e.g. an app which enables the user to buy votes or broadcast competition entries, and so participate or interact in programming.

If a broadcaster invites its audience to participate in or interact with programming, Rule 9.26 of Code requires that it may only charge for such activities by means of "...of controlled premium rate telephone services or other telephony services based

~~on similar revenue-sharing arrangements for which the revenue generated is shared between relevant parties.~~”.

Is a paid-for app a telephony service?: As stated, Rule 9.26 serves to ensure that paid-for interaction between a viewer or listener and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. To date, paid-for participation in programming has therefore been limited to telephony services (phone/text).

However, Ofcom recognises the pace of change and innovation in the sector, and the advantages that evolving technologies offer to viewers and listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that viewers and listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.

We have therefore concluded that, in principle, the use of apps to charge the audience for participation is an acceptable form of premium-rated telephony service for the purposes of Rule 9.26. This applies in cases where the app itself is paid-for, or where the app is free but enables payment to be taken – for example, to purchase a number or block of votes or competition entries. (The effect of this decision is confined to the Broadcasting Code: it does not affect the status of apps as premium rate telephony services or otherwise under other codes or rules, such as the PhonepayPlus Code or other provisions of the Communications Act 2003). Currently, we envisage that such apps will be linked to telephony platforms, i.e. they will not be self-standing mechanisms such as websites, independently existing payment methods and the like. We are however prepared to re-examine this area should developments make it desirable to do so.

What are the key considerations for broadcasters?: To comply with Rule 9.26, a key requirement for broadcasters to consider is whether revenue from the audience’s use of such an app is shared, for example with the platform owner or service provider.

The app must also meet the requirements of Rule 9.27 (“...enabling viewers/listeners to participate directly in or otherwise contribute directly to the editorial content of the programme” or meeting the definition of PRM) and Rule 9.28 (“...where a **controlled** premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate telephony service must be clearly subsidiary to that primary purpose”).

As with the use of conventional premium-rated telephony, apps will be subject to all other relevant rules in the Code. These include, in particular, Rules 9.1 to 9.5 which govern editorial independence and the need to avoid it being compromised by the promotion, or unjustifiable exposure, of products and services in programming.

Undue prominence: Licensees should feature acceptable paid-for participation routes only in a manner and to an extent that can be justified editorially. General guidance on undue prominence and editorial justification can be found in the guidance to Rule 9.5 above. This contains advice on the use of PRS which is directly relevant to the use of apps.

However, a significant difference between conventional premium rate telephony services and apps is that the former are non-proprietary and the latter are not. Apps are created for particular platforms and devices. This gives rise to additional questions of undue prominence where programming references to participation or

interaction through a particular app gives exposure to a specific platform operator or device manufacturer, or both.

Undue prominence will be a particular concern where a premium-rated app tied to only one platform is the sole means for viewers to participate. One way of managing this risk is to ensure that such an app is one of a range of possible other entry routes, such as conventional voice and text mechanisms. Of course, even in such circumstances, exposure for the app must be appropriately limited so as to comply with the undue prominence rule.

Voting and competition entry – licence conditions and verification: In 2008 Ofcom varied all its categories of television licence to include conditions that made clear that the licensee remains responsible for all communication with viewers. The conditions cover all forms of communications that are publicised in programmes. In particular, the conditions specify what constitutes a PRS, and require that where PRS are used for the purpose of viewer voting or competition entries, third party verification is required.

Where one of the possible entry routes is a PRS and verification is therefore required, all votes and entries, including those submitted via non-PRS routes, must be verified for the PRS verification to retain its integrity. For example, this applies to free entries to audience competitions that also include PRS entry routes.

Therefore in cases where paid-for participation via apps does not fall within the definition of PRS, those apps would not, in themselves, require third party verification for their use in voting or competitions. However, licensees who use such apps alongside conventional PRS should be aware that all votes and entries made through apps (and other non PRS-means) should be included in a scheme of verification, in line with the licence conditions.

Rule 9.27 Controlled premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or**
- b) they fall within the meaning of programme-related material.**

Each case must be assessed on its particular facts. However, in considering whether a particular instance of promotion of CPRS complies with the requirement regarding direct contribution to editorial content, the following questions are likely to be relevant:

- Is it clear that the PRS enables viewers to participate directly in or contribute directly to the editorial content of the programme? Such interaction could include voting, competition entry, or texting in views on a particular issue.
- Is the degree to which a PRS is referred to within the programme clearly justified by the degree to which the PRS contributes to editorial content? If, for example, there
- are very frequent and prominent messages to viewers to call a premium rate telephone number to give their views on air on a particular issue, but the programme in fact includes little or no discussion of views submitted by callers this tends to suggest that the PRS does not satisfy the requirement for direct contribution to editorial content.

- Does the PRS involve the provision of a private consultation or conversation similar in nature to other commercial services provided by non-broadcasters, typically promoted in newspapers, magazines, or broadcast advertising (as opposed to programming)? If so, this tends to suggest that the PRS is primarily a commercial service rather than a genuine means of contributing to editorial content, and should therefore not be referred to within programming.

See also guidance on programme-related material below.

Rule 9.28 Where a controlled premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate telephony service must be clearly subsidiary to that primary purpose.

Programme content should clearly be editorially driven and not be essentially a vehicle for the promotion of PRS.

In interpreting Rule 9.28, we consider it relevant to take into account a Judgment by the European Court of Justice (“ECJ”) on 18 October 2007 regarding interpretation of the TWF Directive. In its judgment, the ECJ ruled that:

“a broadcast or part of a broadcast during which a television broadcaster offers viewers the opportunity to participate in a prize game by means of immediately dialling a premium rate telephone number, and thus in return for payment, is covered by the definition given by Article 1(f) [of the TWF Directive] of teleshopping if that broadcast or part of a broadcast represents a real offer of services having regard to the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole and also to the type of questions which the candidates are asked”.

Whilst the ECJ’s ruling was made in the course of proceedings between the Austrian communications authority and an Austrian broadcaster regarding a particular quiz show broadcast by that broadcaster, Ofcom considers that the ruling is of wider significance. If it is possible for a quiz show, which invites viewers to call a premium rate telephone number for a chance to answer a question and win a prize, to represent “a real offer of services”, then it follows that other genres of broadcast content predicated on the use and promotion of premium rate telephony services may – depending on the particular facts – also represent a “real offer of services” and therefore be a form of advertising.

In assessing compliance with Rule 9.28, broadcasters should therefore consider each of the following questions:

- What is the nature of the programme? If a programme consists primarily of promotional messages for the PRS and there is little recognisable editorial content, it is unlikely to be compliant with Rule 9.28 (and will also raise issues under Rules 9.1 to 9.5). If, however, PRS is only one element of the broadcast content, e.g. as may be the case in a studio based game show, a magazine-format show, a sports discussion show, or a reality show, then references to it within the show are more likely to be acceptable (provided they are not unduly prominent).

- Is the degree to which the PRS is referred to within the programme clearly justified by the degree to which it contributes to editorial content? If, for example, a programme includes frequent and prominent exhortations to viewers to call a premium rate telephone number in order to speak to a presenter on air but, of the calls received, disproportionately few are in fact put through to the studio (and therefore the contribution to editorial content is minimal), this may well be problematic. To take a contrasting example, where the presenter is seeking input from viewers but in fact few people are calling the show, there may be editorial justification for the presenter to repeatedly ask viewers to call (or text) a PRS, in order to generate sufficient editorial content for the show.
- What is the cost to an audience member of calling the PRS? This may be relevant in considering whether a PRS is genuinely intended to encourage audience participation or whether a viewer is in effect purchasing a service or product, e.g. a private consultation.

Even where the PRS does clearly contribute to editorial content, broadcasters must take care to ensure compliance with other aspects of the Code. For example, if on calling the PRS number promoted in the programme, a caller is presented with advertising messages or with options other than direct participation as promoted within the programme, this would tend to suggest that the programme is seeking to promote a product or service (other than the legitimately promoted PRS) and be in breach of the Code. Advertising-type claims about the PRS that go beyond what is editorially justified (and what is required under Phonepay Plus regulations) are also likely to be in breach e.g. “cheaper call rates”.

Broadcasters should also note that particular care must be taken with pre-recorded broadcast content which encourages viewers to call a PRS. Such material has the potential to mislead viewers if there is a suggestion that using the service offers the opportunity for viewer interaction with the programme. In addition to raising issues under Section Nine, such content may also raise questions of fairness and audience trust. See also Rule 2.2.

Where PRS is used and promoted in a programme in a way that is not consistent with the rules in Section Nine, Ofcom may judge that such content is in effect advertising. In such cases, it must comply with the relevant advertising content and scheduling rules.

From 1 September 2010 “participation TV” (PTV) services have been regulated as teleshopping (i.e. advertising) material¹⁰. Channels predicated on such output have had adjustments made to their licences to reflect this change.

Such material – whether provided as whole channels or as blocks (“windows” of programming) – is now regulated by Ofcom under the BCAP Code, ASA/BCAP¹¹ is not responsible for this category of advertising, though it retains responsibility for spot advertising of services of this type on non-PTV channels, where it is permitted.

PTV is television content whose purpose is to generate interaction by viewers. PTV’s funding model is to encourage such interaction through premium rate telephony (therefore including voice, text, MMS and so on) and in some cases through the use of credit and debit card payment. The most common genres of PTV programming are “flirt” chat, “adult” chat and “psychic” readings¹².

Whether in any particular case the use of PRS or other, related pay mechanisms can be accommodated within the rules for programming or whether the licensee should regard the material as teleshopping (and therefore in some cases change the nature of the content to promote the pay mechanism more frequently explicitly) must be assessed on its individual facts.

This rule ensures that licensees do not employ non-telephony methods of charging for participation in or interaction with programming. The use of credit or debit cards, for example, or other money transfer arrangements cannot be used for this purpose.

Rule 9.29 Any use of controlled premium rate telephony numbers must comply with the Code of Practice issued by PhonepayPlus.

See <http://www.phonepayplus.org.uk/output/Code-of-Practice-1.aspx>

Non-geographic call costs

Rule 9.30 The cost to viewers for using premium rate telephony services non-geographic telephony services must be made clear to them and broadcast as appropriate.

Non-geographic telephone numbers are those phone numbers which are not linked to a specific location. They include numbers starting 03, 08, 09 and 118. Unlike geographic numbers (those starting with 01 or 02), non-geographic numbers are not associated with a particular place and can be used nationwide without varying the dialling code.

Full details of the number ranges that must be priced for consumers and the manner in which this must be done can be found at: www.ukcalling.info.

Where viewers are charged for interaction with or participation in programming, Ofcom expects that costs are made clear as fully as is necessary for callers or potential callers to understand what the cost will be (see below). PhonepayPlus rules on the disclosure of call costs should be observed (in line with Rule 9.29), but further considerations may apply.

Licensees must make clear the costs of interaction or participation whether the mechanism to do so is formally a controlled PRS or is otherwise acceptable under Rule 9.26 (see the additional guidance below on Unbundled Tariff Numbers). Where apps are used, for example, the costs must be clearly publicised in programming even where charges are applied at a later stage. Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable. Where costs are provided in on-screen text, this must be legible. We advise broadcasters to refer to the following:

<http://www.cap.org.uk/Resource-Centre/Advice-and-guidance/Broadcast-guidance-and-help-notes/Advertising-guidance-notes/Advertising-guidance-1.aspx>

Unbundled Tariff Numbers

Revenue-sharing services include Unbundled Tariff Numbers (UTN) which are those non-geographic telephone numbers starting 084, 087, 09 and 118.³⁸ The principle underpinning UTN ensures viewers are aware how much of their money is paid to their phone company and how much is passed to others (such as the organisation or service being called). The 'unbundled tariff' structure involves the separation of the retail price into two separate elements consisting of:

- c) the Access Charge: which is paid to the phone company originating the call; and
- d) the Service Charge: which is paid to the phone company terminating the call and may be shared with the company providing the service.

The Access Charge is a single, pence per minute amount, for each consumer's tariff package and is the same across all UTNs. Consumers can find out their Access Charge through their phone provider. Each individual 084, 087, 09 or 118 number has a single service charge that applies to calls to that number from all fixed and mobile phones.

The Service Charge is the charge linked to each individual 084, 087, 09 or 118 number. It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

Broadcasters are required to give viewers specific pricing information when UTNs are used; in particular broadcasters are required to make clear in a prominent position and in close proximity to the UTN, the relevant Service Charge³⁹. Ofcom advises that one of the following messages are used, either:

"Calls cost [i.e. service charge] per minute plus your phone company's access charge",

or:

"Calls cost [i.e. service charge] per minute plus your network access charge".

Further information on the unbundled tariff structure is available at: [URL to website (UK Calling)]. Broadcasters may want to refer to this website in the terms and conditions attached to the use of the relevant UTN.

Marked up Section Ten Guidance:

Rules 10.9 and 10.10 Controlled Premium Rate and similar services

Premium rate and similar services

³⁸ Some UTNs are also classed as controlled PRS, specifically 087 numbers with a service charge higher than 5.833p (excluding VAT), 09 and 118 numbers.

³⁹ The Telephone Numbering Condition binding non-providers is set out in condition in Annex 12 of the 2013 NGCS statement, and the requirement for Communications Providers (i.e. "phone providers") is set out in the amended General Condition 14 in Annex 8 (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)

Ofcom recognises the pace of change and innovation in the communications sector, and the advantages that evolving technologies can offer listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.

For example, “apps” (i.e. software applications downloaded to mobile phones and related devices) may enable their users to buy votes or broadcast competition entries, and so participate or interact in programming, in the same way as they would using controlled premium rate services (“CPRS”).

Controlled PRS are those services which are subject to Ofcom’s PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with Section 120 of the Act.

Controlled PRS are premium rate goods and services that viewers can buy by charging the cost to their phone bill or pre-pay account. These services tend to cost more than a normal phone call or text message and are regulated by PhonepayPlus.

Broadcasters should therefore note that, when controlled PRS, or other communications services based on similar revenue-sharing arrangements for which the revenue generated is shared between the broadcaster and other relevant parties, feature in programming, they are commercial references (and Rules 10.1 to 10.8 also apply).

Full details of the PhonepayPlus Code of Practice (which concerns controlled PRS) can be found at: www.phonepayplus.org.uk

Pricing

Listeners should be aware of the cost of interactivity that is promoted on air and uses either CPRS or other communications services for which the revenue generated is shared between relevant parties based on similar revenue-sharing arrangements.

Under no circumstances would the absence of any aired pricing information comply with Rule 10.10.

Such communication services include Unbundled Tariff Numbers (UTN) which are those telephone numbers starting 084, 087, 09 and 118.⁴⁰

The principle underpinning UTN ensures listeners are aware how much of their money is paid to their phone company and how much is passed to others (such as the organisation or service being called). The 'unbundled tariff' structure involves the separation of the retail price into two separate elements consisting of:

- a) the Access Charge: which is paid to the phone company originating the call; and
- b) the Service Charge: which is paid to the phone company terminating the call and the entity which operates the service on that number (e.g. the broadcaster).

The Access Charge is a single, pence per minute amount, for each consumer’s tariff package and is the same across all UTNs. Consumers can find out their Access Charge

⁴⁰ Some UTNs are also classed as controlled PRS, specifically 087 numbers with a service charge higher than 5.833p (excluding VAT), 09 and 118 numbers.

through their phone provider. Each individual 084, 087, 09 or 118 number has a single service charge that applies to calls to that number from all fixed and mobile phones.

The Service Charge is the charge linked to each individual 084, 087, 09 or 118 number. It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

Broadcasters are required to give viewers specific pricing information when UTN are used; in particular broadcasters are required to make clear in a prominent position and in close proximity to the UTN, the relevant Service Charge⁴¹. Ofcom advises that one of the following messages are used, either:

“Calls cost [i.e. service charge] per minute plus your phone company’s access charge”, or:

“Calls cost [i.e. service charge] per minute plus your network access charge”.

Further information on the unbundled tariff structure is available at: www.ukcalling.info. Broadcasters may want to refer to this website in the terms and conditions attached to the use of the relevant UTN.

See also guidance to Rules 2.13 to 2.16 concerning broadcast competitions and voting that use PRS as the entry mechanism.

⁴¹ The Telephone Numbering Condition binding non-providers is set out in condition in Annex 12 of the 2013 NGCS statement, and the requirement for Communications Providers (i.e. “phone providers”) is set out in the amended General Condition 14 in Annex 8 (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)