



The Use of Non-Geographic Numbers in Broadcasting

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

Consultation

Publication date: 10 October 2014

Closing Date for Responses: 21 November 2014

About this document

This consultation sets out Ofcom's proposals for changes to rules around 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. Where broadcast was involved, we found this confusion could lead to both under and over use of these numbers if viewers or listeners of programmes were confused over pricing.

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 are due to come into force in 2015.

We have now looked at the impact of those changes on the existing rules which apply to pricing information given in television and radio broadcasts. This consultation sets out our proposals for changes to these rules in the Broadcasting Code to reflect these changes. These changes are designed to make the costs of using non-geographic numbers more transparent and simpler for viewers and listeners to understand.

The deadline for responses to this consultation is 5pm on 21 November 2014.

Contents

Section		Page
1	Executive Summary	1
2	Introduction	5
3	Regulatory Objectives and Statutory Duties	10
4	Proposed Code amendments	14
Annex		Page
1	Responding to this consultation	22
2	Ofcom's consultation principles	24
3	Consultation response cover sheet	25
4	Consultation questions	27
5	Proposed Code amendments	28
6	Proposed amendments to Code Guidance	31

Section 1

Executive Summary

- 1.1 Non-geographic telephone numbers¹ 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 to participate in a radio call-in show.
- 1.2 In our recent review of non-geographic number services, we concluded that this market was not working well either for consumers – who often did not understand the cost of calls – or for those being called. We have therefore amended the rules on pricing information for these services.
- 1.3 Those changes affect the majority² of non-geographic number services, including those used by broadcasters. As a result, we have reviewed the rules which apply to pricing information given in television and radio broadcasts.
- 1.4 This consultation sets out our proposals for changes to the programme rules with which broadcasters are required to comply and Ofcom's associated guidance. These changes are designed to make the costs of using non-geographic numbers more transparent and simpler for viewers and listeners to understand.

Background

- 1.5 In 2013 we completed a review of non-geographic call services.³ 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.
- 1.6 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.
- 1.7 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.
- 1.8 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 Non-geographic numbers are UK telephone numbers starting 03, 05, 070/076, 080, 0845, 0870, 0843/4, 0871/2/3, 09, 116 and 118. For the avoidance of doubt non-geographic number ranges include all number ranges apart from 01 and 02.

² 116, 080, 084, 087, 09 and 118 numbers

³ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-no/final-statement>

- 1.9 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.
- 1.10 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.

Implications for Broadcasting

- 1.11 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") and it came into effect in July 2005, following extensive public consultation and research during 2004.
- 1.12 Non-geographic numbers are often featured by broadcasters in programming. In our April 2013 policy position on non-geographic numbers⁴ 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 notes was likely to be insufficient.
- 1.13 Accordingly, we have reviewed those aspects of the Code (and accompanying guidance) which relate to the provision of cost information to consumers. This consultation therefore sets out proposals for amendments to the existing Code rules and guidance. Our proposals are intended to ensure an appropriate level of consistency in the rules affecting television and radio programming.
- 1.14 The Unbundled Tariff regime is due to take effect on 26 June 2015. It is our aim therefore to have completed any formal and informal consultation and published our decisions on any necessary changes in good time before that date.

Summary of proposed changes

- 1.15 In reviewing the existing requirements, it is our view that there is no need to change the rules in the Code directly as a result of the introduction of the Unbundled Tariff. This is because the Code already contains provisions on the use of a subset of premium rate telephony services ('PRS')⁵ and other services

⁴ http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/summary/Part_A.pdf
- See paragraphs 5.48 to 5.53

⁵ 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

which also share revenue-sharing arrangements⁶ in programme content. The subset of PRS captured by the Code are known as "Controlled PRS" ('CPRS')⁷ which are subject to the rules set out in the PhoneyPayPlus Code of Practice⁸. The effect of the current rules is 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 and the audience must be informed of the associated call/text costs.

- 1.16 However, during the course of reviewing the current rules to determine whether any changes were needed as a result of the new tariff structure, we noted 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 are no references to other services based on similar revenue-sharing arrangements. In contrast, the radio rules in Section Ten permit audience interaction via a range of different means in programming provided that a commercial reference is appropriately signalled and transparent to the audience.
- 1.17 We consider 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. The specific changes we are proposing are set out in Section Four of this document.
- 1.18 In addition, because the effect of the Unbundled Tariff will mean a change to the information that licensees include about such services in their programming, we intend to amend the guidance that accompanies Sections Two, Nine and Ten of the Code. Again, the changes we are planning to make to our Guidance are set out in Section Four of this document. We would welcome the views of stakeholders on the clarity of our proposals.

Next steps

- 1.19 We invite stakeholders to submit their views on the proposed amendments to the Code and relevant guidance by 21 November 2014.

purposes of the Broadcasting Code, references to 'PRS' are limited to 'Controlled PRS' which are a subset of PRS regulated by PhoneyPayPlus. Our approach is discussed in greater detail in Section Four below. Controlled PRS tend to cost more than a normal phone call or text message.

⁶ References to 'revenue-sharing arrangements' in the Broadcasting Code means revenue derived from viewers and listeners as a result of paid for participation/interaction which results in a financial benefit for the licensee in addition to for example, the platform owner or service provider.

⁷ '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 Ofcom's final statement, Simplifying non-geographic numbers, published on 12 December 2013.

<http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf> Whilst the Code has not to date explicitly referred to 'CPRS', the manner in which the Code defines PRS (i.e. those PRS regulated by PhoneyPayPlus) means that the requirements in Section Nine and Section Ten of the Code apply to the use of Controlled PRS only.

⁸<http://code.phoneypayplus.org.uk/pdf/PhoneyPayPlusCOP2011.pdf>

- 1.20 We will review our proposed amendments in light of the comments we receive and intend to issue a statement setting out any changes as soon as possible thereafter.

Section 2

Introduction

- 2.1 In this section we provide background information about this consultation. Specifically, we explain what non-geographic numbers are; why we concluded that changes to the regulation of non-geographic numbers were required; what those changes are; and the implications of those changes for broadcast content.

The role of non-geographic numbers

- 2.2 Non-geographic numbers are telephone numbers used to access services provided by businesses and Government agencies, information and entertainment services, payment services, as well as numbers called to vote on TV and radio shows. 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.
- 2.3 There are currently a variety of separate non-geographic number ranges which are used for different purposes. These include:
- 2.3.1 080 and 0500 numbers which are used principally to offer private and public sector voice services such as sales, enquiries and help lines. Calls are typically free from landlines but, with some exceptions, are charged from mobiles.
 - 2.3.2 03 numbers have retail call charges which are the same as the price charged by communications providers for geographic calls, with matching discounts and inclusion in bundled minutes. Revenue-sharing is prohibited on this range (revenue-sharing involves the originating communications provider passing some of its call revenues to the service provider operating the number). Part of this range (the 030 sub-range) is reserved for public sector bodies and not-for-profit organisations. Provisions have been made for services to migrate from certain numbers in the 08 ranges to identical numbers in the 03 range.
 - 2.3.3 0843, 0844 and 0845 numbers are lower cost services including pre- and post-sales enquiry lines, public sector services, transaction services and information services, as well as legacy pay-as-you-go dial-up narrowband internet services (predominantly using 0845 numbers). Revenue-sharing takes place on this range.
 - 2.3.4 0870 numbers are charged at geographic prices in the same way as calls to 03 numbers, unless call charges are published in accordance with regulatory requirements. Revenue sharing is allowed, but where calls to these numbers are retailed at geographic call prices, they are not supported by revenues generated. For this reason, 0870 numbers are typically used to provide access to low cost voice and data services such as sales, enquiries and helplines.
 - 2.3.5 0871/2/3 numbers principally offer higher cost pre- and post-sales enquiry lines, some public sector services and services such as the international telephony services provided by resellers.

- 2.3.6 09 numbers are premium rate numbers used mainly to offer competitions, scratch cards, adult entertainment, chat lines and some post-sales services such as technical support. Call prices vary widely. Calls can be charged by time duration, per call, or a combination of both. Prices are currently capped at £1.53 per minute or per call from most landlines.
- 2.3.7 116 numbers were introduced to harmonise European-wide access to services of social value. These include a hotline for missing children, a helpline for victims of crime and a number used to access non-emergency medical on-call services.
- 2.3.8 118 numbers offer competing Directory Enquiries services.

Changes to our approach to the regulation of non-geographic numbers

- 2.4 We began our review of non-geographic numbers in 2010⁹ in response to concerns that consumers were confused about what these numbers meant and how much the calls cost. After detailed analysis and research and consultation with industry we came to the view that consumers generally did not know how much these calls cost and often overestimated the costs. This made consumers generally suspicious of these numbers and reluctant to use them. In turn this undermined innovation and service availability and, in the worst cases, led to vulnerable consumers being deterred from easily contacting socially important services. We therefore consulted on options for wide-ranging changes to the regulation of non-geographic numbers to address the consumer problems we had identified.¹⁰
- 2.5 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').¹¹ 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 a systematic reformation across the non-geographic numbers regime was required.
- 2.6 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:
- an *Access Charge* to be paid to the phone company which originates the call; and
 - 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.

⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/ngnservices/summary/main.pdf>

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

¹¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/final-statement.pdf>

- 2.7 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 passed on to others.
- 2.8 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:
- 2.8.1 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;
 - 2.8.2 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;
 - 2.8.3 the introduction in most cases of caps on the maximum rate of the service charge;
 - 2.8.4 phone companies to publicise the amount of the access charge for each tariff package they offer consumers; and
 - 2.8.5 an obligation for organisations and service providers to include their service charge whenever the unbundled tariff number is presented (i.e. in advertising and programming).¹²

The implications for the Broadcasting Code and programme content

- 2.9 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") and it came into effect in July 2005, following extensive public consultation and research during 2004.
- 2.10 The Code is currently separated into ten sections, each designed to secure the relevant objectives in relation to standards, sponsorship and fairness and privacy, as set out in the Act. The sections that contain rules covering call pricing currently apply to both TV and radio services.
- 2.11 Broadcasters currently use non-geographic numbers for a variety of purposes including participating in live shows.¹³ Accordingly, given that service providers including broadcasters will be required to present the relevant service charge whenever an unbundled tariff number is used, we have assessed whether amendments to the Code and accompanying guidance are required.
- 2.12 In making our assessment, we have been mindful that the Code already requires the associated call costs for CPRS to be made clear to viewers and listeners.

¹² 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>)

¹³ 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.

- 2.13 However, following the introduction of the Unbundled Tariff structure broadcasters will be required to give audiences specific pricing information when a broader range of non-geographic numbers are used in programmes.
- 2.14 These changes are a legal requirement and are reflected in the Telephone Numbering Condition binding non-providers and General Condition 14.10 (applying to Communications Providers – “phone providers” – using these number ranges).¹⁴ This Condition will take effect on 26 June 2015 and will require broadcasters who use an unbundled tariff number in their programme material to include the applicable Service Charge for the number in question.
- 2.15 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.”*
- 2.16 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”.*
- 2.17 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.

Purpose of this consultation

- 2.18 In light of the changes set out above, we are proposing some minor amendments to the Code and guidance designed to clarify broadcaster obligations. At the same time our analysis has highlighted some inconsistencies in the pricing rules in the Code which we consider it would be useful to correct. Our proposals are set out in detail in Section 4, but in summary, we consider:
- 2.18.1 current references to PRS in the Code need to be amended to reflect more accurately that 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 currently sets out the methods by which broadcasters may charge for audience participation/interaction (i.e. CPRS or other communications services in which the generated revenue is shared) will need to be updated to reflect accurately the types of services the rule is intended to permit.

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

- 2.18.3 Rule 9.30 within Section Nine of the Code ('Commercial References in Television Programming') which currently refers to call costs of premium-rate services only will need to be updated to refer to the costs associated with any use of a non-geographic number (which includes CPRS) for the purposes of audience participation;
 - 2.18.4 the rules in Section Ten of the Code ('Commercial Communications in Radio Programming') will need to be amended to reflect accurately the types of services the rule is intended to permit and include an accompanying note directing licensees to more detailed information in the Code Guidance;
 - 2.18.5 the reference to PRS¹⁵ in the accompanying note to Section Two of the Code ('Harm and Offence'), which refers to broadcast competition and voting practices will also need 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 will need to be amended to reflect the new detailed requirements associated with the use of unbundled tariff numbers.
- 2.19 Correcting these inconsistencies will ensure there is no confusion over the requirements associated with call cost announcements that will apply when the unbundled tariff comes into force in June 2015.
- 2.20 In developing our consultation on the Code, we have had regard to Ofcom's regulatory objectives and statutory duties set out in Section 3 of this document. In particular we are mindful of our duty to ensure that regulation does not impose unnecessary burdens, and that it does not maintain regulatory burdens which have become unnecessary.
- 2.21 It is important to note that the statutory framework within which television operates differs from radio. In particular, 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.¹⁶ We have not sought in this process to reassess those differences. As a result, the proposals we are now putting forward are limited to those rules which require broadcasters to ensure appropriate call pricing information is included where non-geographic numbers are used in broadcast content.
- 2.22 The revised guidance (including the requirement for broadcasters to make clear the relevant call costs) will come into effect on 26 June 2015.

¹⁵ See paragraph 1.15

¹⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/724339/statement/statement.pdf>

Section 3

Regulatory Objectives and Statutory Duties

- 3.1 In this section we set out the underlying legal framework in which the regulation of broadcast content currently operates. We also set out our analysis of the likely impact of our proposals on broadcasters and other stakeholders.

Ofcom's statutory duties

- 3.2 As part of its duties in relation to broadcasting, Ofcom is responsible for setting broadcast standards for the content of programmes. The objectives to be secured by these standards under section 319(2) of the Act that are relevant to this Code Review of rules for commercial references in television programming are:
- 3.2.1 that persons under the age of eighteen are protected;
 - 3.2.2 that news included in television services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - 3.2.3 that news included in television services is reported with due accuracy;
 - 3.2.4 that generally accepted standards are applied to the contents of television services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
 - 3.2.5 that the product placement requirements are met in relation to programmes included in a television programme service;
 - 3.2.6 that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television services;
 - 3.2.7 that the inclusion of advertising which may be misleading, harmful or offensive in television services is prevented;
 - 3.2.8 that the international obligations of the United Kingdom with respect to advertising included in television services are complied with; and
 - 3.2.9 that the unsuitable sponsorship of programmes included in television services is prevented.
- 3.3 In setting, or revising, these standards Ofcom must have regard to the following matters under section 319(4) of the Act:
- 3.3.1 the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - 3.3.2 the likely size and composition of the potential audience for programmes included in television services generally, or in television services of a particular description;

- 3.3.3 the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - 3.3.4 the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - 3.3.5 the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - 3.3.6 the desirability of maintaining the independence of editorial control over programme content.
- 3.4 In relation to the standard objectives about sponsorship and product placement section 321 of the Act provides that Ofcom:
- 3.4.1 must include general provision governing standards and practice in sponsorship and product placement; and
 - 3.4.2 may include provision prohibiting forms and methods of sponsorship and product placement.
- 3.5 Broadcast standards are maintained by means of codes. The Code identifies the standards that apply to editorial content (i.e. programming) and sponsorship arrangements. Content is assessed on a case-by-case basis to determine whether it complies with the Code. The Code itself must comply with European legislation.

European Legislation

- 3.6 The Audiovisual Media Services ("AVMS") Directive sets out the European Union framework for the regulation of television services. This Directive was adopted by the European Union on 19 December 2007, and was required to be implemented into UK legislation by 19 December 2009.
- 3.7 The AVMS Directive amended the Television without Frontiers Directive ("the TWF Directive") which had been adopted by the then European Economic Community in 1989. The TWF Directive introduced minimum common standards of advertising and sponsorship regulation in order to facilitate a single market in broadcasting services in accordance with the Treaty of Rome. It sets minimum standards in relation to the protection of minors, to prohibiting incitement to hatred, as well as providing for a right of reply.

Relevant consultation considerations

- 3.8 In consulting upon the review of the Code in relation to commercial references in television programming, we must take into account our responsibilities under the Act and other relevant legislation.
- 3.9 Section 3(1) of the Act says that Ofcom's principal duty in carrying out its functions shall be to further the interests of:
 - 3.9.1 citizens in relation to communications matters; and

- 3.9.2 consumers in relevant markets, where appropriate by promoting competition.
- 3.10 Section 3(2) specifies matters which Ofcom must secure in carrying out its functions. These include:
 - 3.10.1 the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - 3.10.2 the maintenance of a sufficient plurality of providers of different television and radio services; and
 - 3.10.3 the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services.
- 3.11 Section 3(3) and section 3(4) say that in performing the duties set out in section 3(1), Ofcom must have regard to a variety of other factors, including:
 - 3.11.1 the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed;
 - 3.11.2 the desirability of promoting competition in relevant markets;
 - 3.11.3 the need to secure the application of standards in the manner which best guarantees an appropriate level of freedom of expression;
 - 3.11.4 the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection;
 - 3.11.5 the needs of persons with disabilities, of the elderly and of those on low incomes;
 - 3.11.6 the opinions of consumers in relevant markets and of members of the public generally; and
 - 3.11.7 the different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and urban areas.

Impact Assessment statement

- 3.12 The analysis presented in this document, represents an impact assessment as defined in section 7 of the Act¹⁷.
- 3.13 Impact assessments provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy making. This is reflected in section 7 of the Act, which means that generally we have to conduct impact assessments where our proposals would be likely to have a significant effect on businesses and the general public, or where there is a major change in our activities. However, as a matter of policy,

¹⁷ http://www.legislation.gov.uk/ukpga/2003/21/pdfs/ukpga_20030021_en.pdf

we are committed to carrying out and publishing impact assessments in relation to a great many of our policy decisions.

- 3.14 We have also carried out a separate Equality Impact Assessment to ensure we have due regard to: eliminating unlawful discrimination, harassment and victimisation; advancing equality of opportunity; and fostering good relations/positive attitudes between different groups in relation to the Equality groups as set out on our website¹⁸.
- 3.15 We consider that all consumer groups are likely to be impacted positively by the proposals set out in this consultation. Specifically, where these numbers are used in programme content, improved transparency of prices will create greater consumer price awareness, reduce confusion and engender confidence in using non-geographic telephone services. In our view this will also have a positive impact on innovation in this sector.

¹⁸ Ofcom, *Better Policy Making – Ofcom's approach to Impact Assessment*, Ofcom, 21 July 2005: http://stakeholders.ofcom.org.uk/binaries/consultations/better-policy-making/Better_Policy_Making.pdf

Section 4

Proposed Code amendments

- 4.1 In broadcast content some of the non-geographic number ranges are used as a means for viewers and listeners to interact with programmes e.g. in a television voting programme or a call-in show.
- 4.2 As set out in Section 2 above, in making our assessment of potential amendments to the Code, we have been mindful that the Code already requires call costs for CPRS to be made clear to viewers and listeners.
- 4.3 However, the range of numbers required to be priced and the manner in which the pricing is displayed will change under the new regime. We are therefore proposing some minor amendments to the Code and guidance designed to clarify broadcasters' obligations. At the same time, our analysis has highlighted some inconsistencies in the pricing rules in the Code which we consider it would be useful to correct.
- 4.4 In this section we set out our proposed amendments to the Code and the specific points on which we are inviting views.

Amendments to the Broadcasting Code

- 4.5 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") and it came into effect in July 2005, following extensive public consultation and research during 2004.
- 4.6 As discussed in Section 2, we consider the proposed changes to the rules in the Code to be minor. This is because the Code already contains provisions on the use of premium rate telephony services. In particular, broadcasters may only charge audiences to participate or interact with a TV programme by means of CPRS or other services in which the revenue generated is shared between the broadcaster and other relevant parties and the audience must be informed of the associated call/text costs.
- 4.7 As noted above, our analysis has highlighted some inconsistencies which we consider it would be useful to correct. Specifically, we have noted that Section Two, Section Nine and Section Ten place marginally different requirements on broadcasters to inform listeners and viewers about the likely costs of interacting with a programme and therefore we consider it sensible to amend the wording in these sections.
- 4.8 It should be noted that, because a specific cost announcement is required in relation to the unbundled tariff, we intend to issue additional guidance in this area to assist broadcasters. This will accompany the revised Code and be issued alongside it.

Section Two: Harm and Offence

- 4.9 The rules in Section Two serve to ensure that 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. This includes rules which are designed to protect audiences from harm that can result from audience competitions and voting.

- 4.10 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.
- 4.11 The Code includes a note in Section Two, which applies to all broadcasters and refers readers to corresponding rules in Sections Nine and Ten. The note refers only to competitions and voting involving the use of PRS¹⁹ (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 consider the note in Section Two should be amended to reflect that position.

Proposed amendments to Section Two (in grey shaded text):

Broadcast competitions and voting rules:

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 services~~ 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 to 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

¹⁹ See paragraph 1.15

any means to decide or influence, at any stage, the outcome of a contest.

- 4.12 Although the wording of Rule 2.14 should be sufficient to ensure that audiences are not materially misled, we considered that the existing note that deals specifically with call costs should now be amended to ensure consistency and clarity. The guidance that accompanies these rules sets out in more detail the call cost requirements of those numbers that are subject to the Unbundled Tariff. (See Annex 6).

Question 1: Do you agree with our proposed amendment to the note following Rule 2.16? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Section Nine: Commercial References in Television Programming

- 4.13 Section Nine contains a set of principles and general, overarching rules that 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.
- 4.14 Section Nine contains specific rules which relate to the use of CPRS and other communications services in which the revenue generated is shared between the broadcaster and other relevant parties (such as the platform or service provider) in programming (see below). 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 apps²⁰ to charge the audience for participation, they do not normally²¹ allow voting credits and interaction to be purchased via a self-standing proprietary platform like a website. This policy was originally set out in an Ofcom consultation and statement in November 2009.²²

²⁰ 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 premium-rated telephony service for 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. (Guidance Notes: Section Nine Commercial references in Television Programming: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>).

²¹ See footnote 24

²² See sections 4 and 6 of the document Participation TV, published on 3 November 2009, available at <http://stakeholders.ofcom.org.uk/consultations/participationtv3/>.

- 4.15 Rule 9.26 currently states that broadcasters are permitted to charge for audience participation or interaction by means of PRS²³ or other telephony services based on similar revenue-sharing arrangements. In practice this means TV broadcasters are restricted to using CPRS or other telephony services based on similar revenue-sharing arrangements (usually mobile device apps) as methods of paid-for audience interaction.²⁴ We have proposed an amendment to the note at the start of this section that clarifies on which services paid for audience participation is permitted i.e. CPRS, as opposed to all PRS. This amendment simply reflects the current policy position and clarifies which PRS are acceptable mechanisms for paid-for audience interaction.
- 4.16 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 the revenue is shared, for example with the platform owner or service provider. Therefore we have proposed an amendment to the wording of Rule 9.26, to ensure the terminology is consistent with existing telecoms policy. Importantly our proposed amendment is not intended to change the scope of Rule 9.26.
- 4.17 However, Rule 9.30 currently requires only that viewers are informed of the associated call costs that apply to CPRS²⁵ services only, rather than the broader set of numbers which are covered by the unbundled tariff. As some of these numbers (such as 084 numbers) are not regulated by PhonepayPlus (such regulation being how the Code defines PRS for its purposes), they do not fall within the definition of a controlled PRS number set out in the Code²⁶. Given the legal requirement that all unbundled tariff numbers used in broadcast content from 26 June 2015 must be accompanied by specific cost information, we consider it necessary to alert broadcasters to that requirement.

²³ See paragraph 1.15

²⁴ 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. Following its conclusion, Ofcom will review the extent to which broadcasters have used the pilot period to trial such 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.

²⁵ See paragraph 1.15

²⁶ See paragraph 1.15

Proposed amendments to Section Nine (in grey shaded text):

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 the broadcaster and other 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).

- 4.18 The guidance that accompanies these rules sets out in more detail the call cost requirements of those numbers that are subject to the Unbundled Tariff. (See Annex 6).

Question 2: Do you agree that our proposed definition of CPRS within Section Nine of the Code is clear?

Question 3: Do you agree with our proposed amendment to Rule 9.26? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Question 4: Do you agree with our proposed amendment to Rule 9.30 and the following note? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Section Ten: Commercial Communications in Radio Programming

- 4.19 The rules in Section Ten are designed to maintain an appropriate level of consumer protection, by ensuring that all commercial arrangements relating to broadcast material are signalled, and therefore transparent, to the listener. Section Ten contains specific rules on the use of PRS and similar services (see below). 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) means that in practice Rules 10.9 and 10.10 are referring to Controlled PRS²⁷.
- 4.20 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 (see paragraph 2.18, above). 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.
- 4.21 We consider Rules 10.9 and 10.10 currently reflect the requirement to ensure that where CPRS²⁸ or similar services (including non-geographic numbers) are used, the relevant costs are made clear to listeners and broadcast as appropriate.
- 4.22 However, as is the case with Section Nine, we consider the existing rules on CPRS²⁹ and the associated costs in Section Ten could be clearer. Accordingly, we have proposed similar amendments, to clarify that the rules are limited to the use of CPRS. Further, we have proposed an amendment to the wording of Rule 10.10, similar to that proposed to Rule 9.26 above. We note the existing policy under the Code permits radio broadcasters to use other services for audience participation, as long as the revenue is shared, for example with the platform owner or service provider. Again our amendments are not intended to change the existing policy or remit of this rule.
- 4.23 Finally, we consider that it would be helpful to radio broadcasters to include a reference in the Code directing licensees to Code guidance which will contain more information about possible approaches to providing cost information. We therefore propose to amend Section Ten to include an accompanying note to replicate the equivalent text that currently exists in Section Nine of the Code.

²⁷ See paragraph 1.15

²⁸ See paragraph 1.15

²⁹ See paragraph 1.15

Proposed amendments to Section Ten (in grey shaded text):

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 the broadcaster and other 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).

Question 5: Do you agree that our proposed definition of CPRS within Section Ten of the Code is clear?

Question 6: Do you agree with our proposed amendment rule 10.10? If you do not agree with our proposed note, please explain why and suggest alternative wording if appropriate.

Question 7: Do you agree with our proposal to introduce a note following rule 10.10? If you do not agree with our proposed note, please explain why and suggest alternative wording if appropriate.

Overview of the impact of these proposals

- 4.24 In developing our consultation proposals we have taken account of the impact assessment conducted in Ofcom's December 2010 consultation, *Simplifying Non-Geographic Numbers*, published in December 2010.³⁰
- 4.25 Ofcom believes that participation in which viewers or listeners are likely to have a strong personal interest in the outcome requires the provision of specific protection for participants from harm.
- 4.26 Pricing is a subject of great importance. Licensees must consider carefully the information they make available to viewers about costs and give as much clear detail as is practicable. The marked-up rules and notes concern, among other things, the broadcaster's responsibility to avoid materially misleading audiences that are invited on air to participate in broadcast competitions and voting

³⁰ <http://stakeholders.ofcom.org.uk/consultations/simplifying-non-geo-numbers/>

schemes. Given the Code (and relevant guidance) already requires broadcasters to ensure call costs associated with the use of CPRS³¹ are made clear to the audience, we consider the proposed amendments set out above represent minor changes to the Code that will not have a significant impact on stakeholders.

- 4.27 Subject to the responses we receive to this consultation, our intention is to make the proposed amendments to the Code as soon as practicable, given they are not dependent on the introduction of the unbundled tariff. The amended Code guidance will come into force on the same date as the unbundled tariff, currently planned to be 26 June 2015.

³¹ See paragraph 1.15

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 21 November 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeolders.ofcom.org.uk/consultations/XXX>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email nongeographic@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Dan Maher
Content Standards, Licensing & Enforcement Operations Manager
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Marlene Dias on 020 7981 3265.

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or

whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in early 2015.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk . We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email: Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

- A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

- A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

- A2.3 We will be clear about who we are consulting, why, on what questions and for how long.
- A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
- A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.
- A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.
- A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

- A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

Sub heading

Question 1: Do you agree with our proposed amendment to the note following Rule 2.16? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Question 2: Do you agree that our proposed definition of CPRS within Section Nine of the Code is clear?

Question 3: Do you agree with our proposed amendment to Rule 9.26? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Question 4: Do you agree with our proposed amendment to Rule 9.30 and the following note? If you do not agree with our proposed amendment, please explain why and suggest alternative wording if appropriate.

Question 5: Do you agree that our proposed definition of CPRS within Section Ten of the Code is clear?

Question 6 Do you agree with our proposed amendment rule 10.10? If you do not agree with our proposed note, please explain why and suggest alternative wording if appropriate.

Question 7: Do you agree with our proposal to introduce a note following rule 10.10? If you do not agree with our proposed note, please explain why and suggest alternative wording if appropriate.

Annex 5

Proposed Code amendments

Proposed 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 services~~ 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 to 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.

Proposed amendments to Section Nine: Commercial references in Television

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 the broadcaster and other 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 the broadcaster and other 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 6

Proposed amendments to Code Guidance

XXX = proposed new text

XXX = existing text

XXX = deleted text

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 the broadcaster and other 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 118.³²

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:

- 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).

³² 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.

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 Charge³³. Ofcom advises the following message is used:

"This call/text will cost you X pence [i.e. the service charge] per minute/call/text plus your phone company's 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.~~

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 the broadcaster and other 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

³³ 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>)

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 the broadcaster and other 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

PhonpayPlus 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 118.³⁴ 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

³⁴ 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.

in close proximity to the UTN, the relevant Service Charge³⁵. Ofcom advises the following message is used:

"This call/text will cost you X pence [i.e. the service charge] per minute/call/text plus your phone company's 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~~

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~~ 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

³⁵ 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>)

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 the broadcaster and other 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 118.³⁶

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 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 the following message is used:

"This call/text will cost you X pence [i.e. the service charge] per minute/call/text plus your phone company's 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.

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.

³⁷ 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>)