

Consultation response form

Question	Your response
<p>Question 3.1: Do you agree with our proposal to remove the obligation for telecoms providers to provide the local dialling facility? Please provide reasons for your response.</p>	<p>Confidential? – N</p> <p>We agree with this proposal. Maintaining local dialling will become uneconomic following the move to IP, the cost will not be justified by the diminishing need for it. Simply removing the requirement to offer local dialling give providers the freedom to withdraw the facility in the most effective way.</p> <p>We are concerned however that there may not be adequate publicity given to the withdrawal by some providers and feel that there should be a minimum standard for providers to comply with. This doesn't have to be very tightly set out, just approximate timescales and types of media used and notifications to be used</p>
<p>Question 3.2: Do you agree with our proposal to retain the provisions in the Numbering Plan which (i) allocate location significance to area codes and (ii) allow phone users to request out-of-area use of geographic numbers? Please provide reasons for your response.</p>	<p>Confidential? – N</p> <p>We agree with this proposal.</p> <p>Many users still value the ability to identify that the call is from somewhere known to them. It gives them comfort that they are likely to know the caller. Some consumer websites recommend that the origin of a call is checked to help weed out scam and nuisance calls. The use of spoofed CLI, particularly since the introduction of the new regulations on CLI, is an issue but it isn't so great that it would devalue local codes.</p> <p>That said, being able to have out of area codes is valuable to many consumers, residential and business, who change location but want to keep their number or in the case of businesses to have a local presence.</p>
<p>Question 4.1: Do you agree with our proposal to modify the Numbering Plan to prohibit direct and indirect revenue sharing with the calling party for calls to all geographic and</p>	<p>Confidential? – in part</p> <p>Please see attached file "question 4.1 Telecom2 response.docx"</p>

non-geographic numbers? Please provide reasons for your response.

Please complete this form in full and return to futureofnumberingteam@ofcom.org.uk.

FUTURE OF TELEPHONE NUMBERS

Second consultation

Question 4.1 Telecom2 response

Question 4.1: Do you agree with our proposal to modify the Numbering Plan to prohibit direct and indirect revenue sharing with the calling party for calls to all geographic and non-geographic numbers? Please provide reasons for your response.

We cannot agree to this proposal. The modification to the numbering plan will affect more services than just calls for cash and the basis for the modification is unsound, being based on spurious and unsupported allegations by BT. We do not believe that BT have genuine concerns about the nature of the traffic, we believe they are attempting to mitigate the effect of a poor commercial decision and are being anti-competitive by preventing service providers from offering legitimate services.

OTHER SERVICES

The wording of the proposed modification is:

B3.1 Those who Adopt or otherwise use any Telephone Number listed in Part A1 of the Plan shall not directly or indirectly share with any Calling Party any revenue obtained from providing a service on those numbers.

This wording draws in pay for product, prizes for competitions, quizzes and lotteries and other services where the call is made in the hope of receiving a benefit which is funded all or in part by the revenue from calls and so all fall within the scope of the modification. These services cannot be said to be genuine communications services, as described in para 4.12 of the consultation, but no one would argue that they are not good faith use of the communications networks.

There is a regulatory requirement in some cases that sufficient funding must be in place to pay for the benefit but this is a contingency in case the revenue is inadequate to cover the cost of the benefit and by no means says that the benefit cannot be funded from revenue .

Charities in particular will suffer a significant loss of revenue.

The behaviours represented in para 4.13 are largely common to other services, not just calls for cash. We do not however recognise “*new numbers to call are constantly provided and the caller is encouraged to work their way through the list; “*. Our experience is that the same numbers are used with little variation.

BASIS FOR THE MODIFICATION

The basis for the modification is unsound, for several reasons.

03 AND 070

Much mention of 03 and 07 services is made but these two ranges were never intended to have revenue share, with either the caller or the called party. This is clear to us from the entries in part B

of the numbering plan. Rates now are so low that there is no scope for economic revenue share with any party, although we note that some Consumer's providers are still not offering 070 in bundle despite the low termination rates and lack of revenue share. As such, any discussion around these ranges is not relevant or appropriate to this proposal. If there really is a need to be more specific that revenue sharing applies to the caller as well as the called party the appropriate entries about revenue share in part B of the numbering plan could be modified to that effect by simply replacing "end user" with "calling party", although it is clear to us that End user in this context means the caller.

IMPACT OF REVENUE SHARING WITH CALLERS

We believe that the detrimental impact of revenue sharing with calling parties, if indeed there is one, has been overstated.

In 4.25 BT says that *"We think that Ofcom should ban revenue sharing with callers (i.e. 'cash for calls') across all ranges. There is no justification for somebody to be paid to make a phone call. At best it incentivises extra network traffic that otherwise would not exist, and at worst it can defraud communications companies of millions of pounds"*

We would argue that winning a prize is being paid for making a phone call. Are BT suggesting that this is unjustified?

As to incentivising extra network traffic that otherwise would not exist, this is the case with any service and is not a reason to prohibit one.

We strongly dispute the quoted millions of pounds figure. Over the last three years the average annual value of AIT cases raised on us by BT has been relatively low and cannot be said to represent millions of pounds even where several Terminating CPs are involved. The value of the traffic to date has been negligible in terms of overall call revenue received by BT and even if traffic levels increased to the point where it was worth one or two million pounds it still wouldn't be material relative to overall call revenues.

Nor is it correct to use the term defrauded, this is an emotive term used by BT to strengthen their case. It is difficult to see how this traffic can be fraud, it fails to meet most of the tests required for an operation to be fraudulent.

4.28 could equally describe Pay for Product, competitions, quizzes and lotteries and other services where the call is made in the hope of receiving a benefit and callers receive no inherent communications benefit from the call itself. We do not agree that it is inefficient. It is hard to argue that sales of goods, competitions and running charity lotteries are harmful to society so why should calls for cash be harmful?

Inclusion of any numbers in bundles will increase the costs of those bundles. It is a commercial decision as to whether to include ranges in bundle, we believe BT mistakenly failed to take the full cost into account when placing NGCS ranges in bundle.

Once these ranges had been included in bundles it was commercially impossible to withdraw them and this is BT's real problem.

We believe that BT failed to take into account the access charges they would no longer be able to raise and that mitigating this loss this is at the root of all the actions they have since taken. We are

aware from discussions at an SIA review meeting that BT approached OFCOM to have calls for cash prohibited on more than one occasion and was told that what they included in bundles was a commercial decision for them. We entirely agree with that decision. Nothing has changed that would impact on that view.

It is noticeable that no other CPs that we are aware of have included NGCS numbers in bundle.

In 4.30 it says *“This means that customers who do not take advantage of these schemes can be made worse off by them.”*. This is not a valid consideration. In any bundle there will be ranges that aren't used by all consumers taking those bundles but will impact on the cost of the bundles.

FAIR USE POLICIES

We do not agree with the comments about the difficulty of implementing fair use policies.

BT could use their acceptable use policy to limit the traffic if it was a real issue. It is stated that it is too difficult, if this is the case why have one?

There is no need and it is not usual to identify the individual numbers used for a particular service when implementing a fair use policy, the consumer would be warned that their use of a particular range or the entire bundle was in breach of the policy.

The problem with implementing fair use policies is a commercial one, BT doesn't want to be seen to be limiting consumers use of bundles even where they have a clear right to. We believe the truth is that BT have made a commercial decision to avoid being seen to be limiting consumers use of their bundles and are therefore attempting to place the onus on OFCOM to do this for them.

AIT

We agree that it requires significant work to identify and challenge AIT, mentioned in 4.31, but this is only where the process is correctly followed. This wasn't the case with calls for cash. BT alleged that Calls for cash is AIT in order to mitigate its losses from a commercial decision and raised a number of cases. BT then failed to properly engage in good faith negotiations and failed to support the AIT cases with any evidence other than unsupported allegations that the traffic was not commercial good faith traffic. When this was challenged on various occasions BT either didn't respond or simply repeated their view, no evidence or rationale for this view was given. At no point did BT meet “strong and convincing” level of evidence required by Annex E of the SIA to permanently retain the withheld funds.

BT may claim they won a number of cases but they didn't win them. There was no admission from us that the traffic was or even could be AIT and no further support for the allegations from BT. In actual fact BT's behaviour meant that the cases simply timed out and BT took advantage of deemed resolution. The only way for CPs to prevent this was to take legal action but the value of the cases wasn't high enough to justify the costs involved in this course of action. BT's behaviour was in breach of the contractual AIT process and contravened an OFCOM instruction to BT to follow the process. Following a complaint, OFCOM told BT that the AIT process was mandatory, not advisory.

4.35 includes *“In addition, as set out in paragraph 4.24 of this consultation, we know from BT's response to the First Consultation that while the threat of AIT remains in the form of revenue sharing*

with calling parties, telecoms providers may find it impractical to consider adding further types of numbers to call allowance bundles.”.

This is disingenuous. The comments assume that calls for cash is AIT, something we do not agree with. Revenue share numbers would never be in bundle in normal circumstances. Telecomms providers make a commercial judgement as to what numbers to include in bundles based on potential losses and it would not be a sound commercial decision to include revenue share numbers in bundle because it would mean the loss of up to 65ppm access charges. As previously stated, we believe that BT made a commercial error and their subsequent actions have been attempts to mitigate the cost of that decision. In any event, we do not believe that this service is AIT, we have yet to be convinced of this by BT.

4.37 says:

There is also the potential that subscribers to cash for calls schemes may find that they do not receive payments as expected. A common element (see paragraph 4.13) includes non-payment by the telecoms provider running the scheme if they do not receive the outpayment from the originating provider for terminating the call. This can occur if the call traffic has been identified by the originating provider as fraudulent or meets the AIT profile. Callers may also find that numbers they believed to be free at the point of use are not part of their telecoms provider’s call allowances, making the caller liable for unexpected call charges. These outcomes can contribute to mistrust of the numbers and confusion.

It is a well known standard contractual provision throughout industry that pay out for a revenue share service is not made and is not expected until the Network Operator receives payment for the traffic. There has been no lack of trust in NGCS traffic due to this condition.

We are aware that access charges are an unexpected call charge for many consumers but no one suggests that they reduce trust in NGCS services.

Callers have a duty to ensure that they are aware of the terms of any contract they enter into, including checking prices before they make calls.

CONCLUSION

We believe the real issue for BT was that BT made a commercial decision to include 084 and 087 calls in bundle based on the service charges, omitting to take into account that this meant BT could no longer raise the access charges associated with these ranges, which were far higher than the service charges. Once the calls had been included in bundle it was difficult commercially to withdraw them or to implement fair usage policies. All they could do was raise AIT cases in order to mitigate the cost of a bad commercial decision.

There was a serious risk that at some point there would be a successful legal challenge to these AIT cases therefore BT is attempting to use OFCOM to reduce the losses incurred by flawed commercial decision making. We believe that OFCOM’s original view, that this was a commercial decision for BT, was the correct one.