



Costas Pittas
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

19 December 2012

Dear Costas

Case CW/01092/09/12 – Dispute relating to BT’s POLOs for 0845 call termination (the “0845 Dispute”)

Sky has reviewed Ofcom’s provisional conclusions in the 0845 Dispute published on 29 November 2012. Sky is concerned by the possible impact that Ofcom’s final determination could have on Sky and other communication providers who transit 0845 originated traffic [CONFIDENTIAL]. We expressed these concerns to Ofcom during a conference call on 12 December 2012 [CONFIDENTIAL] and said we would outline our concerns in writing.

As explained to Ofcom, Sky currently transits 0845 originated traffic [CONFIDENTIAL]. For reference, in 2011/12, Sky originated a total of [CONFIDENTIAL] 0845 minutes of which [CONFIDENTIAL] minutes [CONFIDENTIAL] were terminated on Cable & Wireless UK’s (C&W) network. Sky terminates this traffic [CONFIDENTIAL] and the termination rate payable by Sky is based on two elements:

[CONFIDENTIAL]

Sky considers that the impact could be significant, for 11/12 alone this could be in the region of [CONFIDENTIAL] and accordingly requests that Ofcom considers this potential wider industry impact as part of the final dispute determination.¹

The 0845 Dispute concerns “*BT’s methodology for calculating its payments to terminating communications providers for 0845 calls that it originates*”.² On a narrow interpretation, it would appear that the 0845 Dispute is limited to BT originated calls only and therefore the final determination should not impact transit traffic which originates on Sky’s network. However, Sky requests that Ofcom provide clarification on this point in the final determination.

Sky notes that Ofcom has provided such clarification in relation to the potential impact on other terminating communication providers where Ofcom stated that “*BT has accepted that any payment it has made over the minimum polo is self- inflicted [and] therefore it will not seek any restitution from any CP*” and “*that TCPs should not be at risk of BT seeking to recover amounts in excess of the minimum POLO that it paid them as a result of an error or oversight in its calculation*”

¹ Sky has no comments on Ofcom’s assessment of BT’s methodology for calculating the POLO rate.
² Paragraph 1.2 of Ofcom’s Provisional Conclusions in the 0845 Dispute.



of the revenues.”³ Sky considers that it is appropriate for Ofcom to provide similar comfort to originating CPs, including Sky, **[CONFIDENTIAL]**

Sky also notes that in resolving a dispute, whilst Ofcom must consider what is fair and reasonable between the parties Ofcom must also consider what is reasonable in accordance with its statutory duties and the Community requirements.⁴ Sky considers that it is incumbent on Ofcom to consider the wider impact of the 0845 Dispute on other parties and it would be wrong for Ofcom to ignore the potential effect of the dispute on originating CPs and their customers.

Please do not hesitate to contact me if you would like to discuss this further.

Yours sincerely

Anthony Rosen
Senior Legal Adviser

³ Paragraphs 3.130-3.131 of Ofcom’s Provisional Conclusions in the 0845 Dispute.

⁴ Sections 3 and 4 of the Communications Act 2003 and see further T-Mobile (UK) Ltd & Ors V Ofcom [2008] CAT 12 (TRD) and British Telecommunications Plc & Ors v Ofcom [2011] CAT 24 (08 case).