



**Mobile Broadband Group**  
**PO Box 34586, London SE15 5YA**

17<sup>th</sup> October 2007

Yvonne Matthews  
Content & Standards  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA

Dear Yvonne,

**Consultation paper examining how participation TV should be regulated**

The Mobile Broadband Group (“MBG”, whose members are O2, Orange, T-Mobile, Virgin Mobile, Vodafone and 3) welcomes the opportunity to respond to Ofcom’s consultation on how participation TV should be regulated.

The MBG broadly supports Ofcom’s proposals. The value chain for the delivery of participation services within broadcasting is quite long and we can see that consumers will benefit from knowing that one organisation is primarily responsible for the delivery of a given programme and its associated participation services. Having a single regulator primarily responsible for the oversight of such programming should also provide clarity and convenience for consumers.

While supportive of the principles, we are nevertheless very anxious to know more about the practical implementation. We note on page 17 of the consultation document that *“This proposed re-focusing of the regulation of broadcast use of PRS on to broadcasters would clearly have implications for the arrangements between ICSTIS [PhonepayPlus] and Ofcom. Ofcom and ICSTIS [PhonepayPlus] are considering the possible ramifications and will continue to do so as this consultation progresses.”*

While reports of breaches of the PhonepayPlus code and other misuses of premium rate services have not involved mobile operators, we have considerable obligations under the PhonepayPlus code to supply information in pursuance of the investigation of cases. Failure to provide information in a timely manner can, of itself, constitute a breach of the PhonepayPlus code. Mobile operators will continue to play their part in assisting regulators with the investigation of service provider breaches and, where requested, withholding outpayments. However, we feel that it would not be justified to place any new obligations on mobile operators and trust that Ofcom will not do so. It

is therefore absolutely necessary that mobile operators are made aware of any new processes involved and the new chain of command. Indeed, it would be invaluable for Ofcom to consult us prior to finalising any new arrangements.

A number of questions arise: for example, will only Ofcom be able to initiate cases against participation TV broadcasters? It is clear that adherence to the PhonepayPlus Code will continue to be a requirement but who will investigate alleged breaches – Ofcom or PhonepayPlus? If it's Ofcom, what powers and processes will Ofcom use to request information relating to a case under investigation? In the recent GMTV case, PhonepayPlus investigated and fined the vote aggregator and OFCOM fined the broadcaster. Will this double jeopardy endure or will Ofcom now take sole responsibility for such investigations?

Finally, Ofcom has signalled it will shortly be carrying out a wide-ranging review of the scope of premium rate regulation. The review is an important means of looking at issues across the whole area. Participation TV should not therefore be excluded from the review and anything decided as part of the current consultation should be capable of refinement as a result of what we hope will be a wide ranging review.

The MBG also supports Ofcom's choice of Option 2, that participation TV should be classed as editorial content but with modifications to the rules. We would not support Option 4, as this would result in unjustified restrictions on the programming, bearing in mind the proportion of the audience that merely view the programmes without participating. We note (on page 29) that "*the only acceptable means of participation and charging of viewers for the purposes of rules 10.10 are telephony-based applications (including SMS and MMS)...*". For completeness we would like to draw Ofcom's attention to Payforit, a telephony based payment mechanism for mobiles recently launched across networks. It has been designed to improve pricing clarity to customers buying goods and services on the mobile. For the most part we would expect it to be used to buy digital goods such as music and games. There is the possibility, nevertheless, for it to be used in conjunction with participation TV services.

As a final point, the MBG would request that Ofcom give considerable thought as to how these changes are communicated to the public. These new arrangements do not, we presume, extend to the BBC. How will consumers be informed about the respective roles of Ofcom, the BBC and PhonepayPlus?

In summary, the MBG welcomes Ofcom's policy proposals but believes there are many practical implementation details to finalise before putting them into effect. As a significant stakeholder in the PRS value chain, with an interest in protecting customers that use them, we would very much welcome the opportunity to be consulted about these practical matters.

Yours sincerely,

*Hamish MacLeod*

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