

**Determination to resolve a
dispute between BT and various
communications providers about
NTS outpayments**

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Contents

Section		Page
1	Determination for resolving a dispute between the companies listed at Annex 4 and BT about NTS outpayments for 0845 and 0870 calls	3
2	Summary	6
3	Background	9
4	History of the dispute	11
5	Submissions of the parties	13
6	NTS outpayment methodology	18
7	Discount rate calculations	27
Annex		Page
1	BT Response to the Draft Determination	30
2	C&W Response to Draft Determination	36
3	Colloquium response to Draft Determination	39
4	List of Providers in dispute with BT	40

Section 1

Determination for resolving a dispute between the companies listed at Annex 4 and BT about NTS outpayments for 0845 and 0870 calls

WHEREAS:

- (A) section 188(2) of the Communications Act 2003 (the “Act”) provides that where there is a dispute between different communications providers, and Ofcom have decided pursuant to section 186(2) of the Act that it is appropriate for them to handle the dispute, Ofcom must consider the dispute and make a determination for resolving it. The determination that Ofcom makes for resolving the dispute must be notified to the parties in accordance with section 188(7) of the Act, together with a full statement of the reasons on which the determination is based. Section 190 sets out the scope of Ofcom’s powers on resolving a dispute, which may include, in accordance with section 190(2) of the Act, a direction requiring the payment of sums by way of adjustment of an underpayment or an overpayment;
- (B) on 3 August 2006 BT issued an Operator Charge Change Notice (“OCCN”) to the companies listed in Annex 4 (“the Providers”), amongst others, detailing proposed Number Translation Services (“NTS”) payments (“outpayments”) payable by BT to the Providers for the provision of NTS services on the 0845 and 0870 number ranges from 1 October 2006;
- (C) on 16 January 2007, BT wrote to Ofcom referring a dispute between BT and the Providers on the basis that they had either rejected or neglected to sign the August OCCN. BT requested Ofcom to resolve the dispute by requiring the Providers to accept the terms of the OCCN;
- (D) on 5 February 2007, after considering the referral and contacting the parties, Ofcom decided pursuant to section 186(2) of the Act that it was appropriate for it to handle the dispute and informed the Providers and BT of this decision;
- (G) in order to resolve this dispute, Ofcom has considered, among other things, the information supplied by the Providers and BT and the relevant duties set out in sections 3 and 4 of the Act;
- (H) an explanation of the background to the dispute and Ofcom’s reasons for making this Determination are set out in the explanatory statement accompanying this Determination;
- (I) Ofcom issued a draft of this Determination and the explanatory statement on 26 April 2007 and responses were invited by 11 May 2007.
- (J) This Determination is published on 4 June 2007, and takes effect immediately.

NOW, THEREFORE, PURSUANT TO SECTION 190 OF THE ACT, OFCOM MAKES THE FOLLOWING DETERMINATION:

1. BT shall amend its NTS outpayments methodology to allow for a call set-up payment of 2.55p for all 0845 calls, as set out in Option 3 in Section 6 of this explanatory statement. The call set-up payment will be subject to the discount rates notified by BT in its OCCN of 3 August 2006.
2. The terms on which BT shall provide NTS Call Origination (including the provision of the outpayments) for calls to 0845 and 0870 number ranges shall be those set out in the 3 August 2006 OCCN with effect from 1 October 2006, other than the introduction of the call set-up payment (outlined in paragraph 1 above), and an amended pence per minute rate (to take into account the call set-up payment as per Section 6). The discount rates applied by BT shall be those set out in its OCCN of 3 August 2006.
3. The amended pence per minute rates for 0845 outpayments shall be:

a)	Daytime	3.2741
b)	Evening	0.9485
c)	Weekend	0.8652.

These are rates calculated by BT and notified to major NTS operators through the NTS Focus Group on 10 May 2007.
4. For the purposes of giving effect to paragraphs 1, 2 and 3 of this Determination:
 - a) where amounts have been paid by BT to the Providers which are greater than the amounts due under the methodology set out in paragraphs 1, 2 and 3 above (using a call set-up payment), the Providers shall pay to BT such sums, as appropriate, by way of adjustment of any overpayment; and
 - b) where amounts have been or should have been paid by BT to the Providers which are lower than the amounts due under the methodology set out in paragraphs 1, 2 and 3 above (using a call set-up payment), BT shall pay to the Providers such sums, as appropriate, by way of adjustment of any underpayment.
5. Words or expressions used in this Determination shall have the same meaning as in the Act, except as otherwise stated in this Determination and as follows:
 - (a) "Condition AA11" means the condition numbered AA11 set out in Part 2 of Schedule 1 to the Notification;
 - (b) "Net Retail Call Revenue" means the retail revenue for calls, excluding VAT and after any applicable discounts;
 - (c) "NTS Call Origination" means originating NTS Calls and retailing those NTS Calls to the End-User on behalf of the Third Party who has requested NTS call origination;
 - (d) "Notification" means the notification pursuant to sections 48(1) and 79 of the Act which is set out in *Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets* published by the Director on 28 November 2003;
 - (e) "outpayment" means the Net Retail Call Revenue passed by BT to the Third Party that is purchasing NTS Call Origination, less the charges referred to in paragraph 4 of Condition AA11.

David Stewart

DIRECTOR OF INVESTIGATIONS

Section 2

Summary

- 2.1 On 26 April 2007 Ofcom published a Draft Determination under section 190 of the Communications Act 2003 (“the Act”) to resolve a dispute between British Telecommunications plc (“BT”) and the providers listed in Annex 4 to the Draft Determination (“the Providers”). Ofcom received 3 responses to the Draft Determination, from BT, C&W and Colloquium, set out as Annexes 1, 2 and 3 to this Determination.
- 2.2 The dispute relates to BT’s payments to other providers which BT makes when passing NTS traffic for 0845 and 0870 number ranges (“the relevant number ranges”) to those providers.
- 2.3 On 1 October 2006 BT changed the pricing of 0845 residential calls by replacing the minimum call charge (“MCC”) with a call set-up fee (“CSF”), but continued with a MCC on 0845 business calls.
- 2.4 BT has proposed a blended rate methodology for calculating payments to providers (“outpayments”), which averages outpayments over business and residential calls. The blended rate is a single pence per minute (“ppm”) rate regardless of the call duration.
- 2.5 In addition, BT forecast future discount rates for the purposes of calculating NTS outpayments which resulted in material increases in discount rates. Since increasing discount rates results in lower payments from BT to the Providers, some Providers object to this change.

Discount rate calculations

- 2.6 Based on the initial responses Ofcom received from the Providers, their main concern was not over the new blended rate methodology proposed by BT, but rather over the materially higher discount rates introduced by BT.
- 2.7 The calculations and source data provided to Ofcom by BT give no indication of error in the way that forecast future discount rates have been estimated (since this is how discount rates for future periods have to be calculated), and Ofcom has found no evidence of miscalculation.

BT’s proposed methodology vs other methodologies

- 2.8 As a general rule, Ofcom believes a method of allocating outpayments is most likely to be fair and reasonable if it provides the best match of outpayments to revenues, subject to the costs of implementation being proportionate. Matching outpayments to revenues is also consistent with Ofcom’s Community duties (see Footnote 7 to para 5.11), which include the promotion of competition (in this context, including in markets for services provided using electronic communications accessed using NTS numbers).
- 2.9 Ofcom regards BT’s proposed methodology as a reasonable method of calculating NTS outpayments in that it results in BT paying out the full amount of received NTS revenue less the regulated retention amounts. It is also a simple methodology for both BT and the Providers to use to calculate outpayments.

- 2.10 However, Ofcom has identified another methodology which is also fair, reasonable and non-discriminatory, and which more closely matches revenues with outpayments.
- 2.11 This methodology involves the introduction of a fixed call set-up payment being made by BT for each 0845 call it originates (this is given as Option 3 in Section 6 of this Determination), whether it be from a business or a residential customer. Ofcom concludes that this option is the most appropriate because it offers the closest match of NTS outpayments to revenues. This is consistent with Ofcom's duties as it reflects the purpose of the NTS regime and the NTS call origination condition which aims to promote competition and innovation in service provision.
- 2.12 In their responses to the Draft Determination, two Providers submit that the costs of implementation would be proportionate. BT has questioned this finding.
- 2.13 This Determination sets out more information to the parties to the dispute about the different methods that could be used to calculate outpayments.
- 2.14 This Determination has been made after considering the responses received to the Draft Determination.
- 2.15 Under Option 3, the amended pence per minute rates for 0845 outpayments shall be as follows:
- | | | |
|----|---------|---------|
| a) | Daytime | 3.2741 |
| b) | Evening | 0.9485 |
| c) | Weekend | 0.8652. |
- 2.16 These are rates calculated by BT and notified to major NTS operators through the NTS Focus Group on 10 May 2007.
- 2.17 Ofcom has reviewed these rates and finds that they adequately reflect the reduced variable-rate outpayments of Option 3 (which reduce in line with the level of fixed-amount call set-up payments).

Potential for further disputes is a concern for Ofcom

- 2.18 Ofcom sees the potential for further disputes between BT and NTS terminating communications providers ("TCPs") whenever BT recalculates its discount rates or changes its pricing methodology, since there is little or no incentive for TCPs (such as the Providers) to agree to any new OCCNs.
- 2.19 Ofcom believes that the potential for further disputes could be reduced if BT were to be more transparent in disclosing the methodologies and data used in calculating discount rates, together with a verification process undertaken by a 3rd party (possibly BT's independent auditors). Ofcom suggests that BT considers this approach (although Ofcom would not necessarily accept 3rd party verification as being adequate to demonstrate that a proposed discount rate is acceptable).
- 2.20 Alternatively, BT and TCPs (and other purchasers of NTS call origination) might explore alternative mechanisms that provide for resolution of these issues rather than successive regulatory disputes covering substantially the same issues (save for the calculations of particular prices or outpayments).
- 2.21 Ofcom does not propose, at this stage, to intervene to require action by BT (or Providers) to give effect to this suggestion but does intend to consider whether

Resolution of a dispute between BT and various operators about NTS outpayments

regulatory intervention is required in upcoming policy projects looking at BT's compliance with charge controls.

Section 3

Background

Number Translation Services (NTS)

- 3.1 NTS numbers are those number ranges listed in the National Telephone Numbering Plan (“NTNP”) as “Special Services” numbers.¹ NTS numbers start with 08 or 09.²
- 3.2 An NTS number does not relate to a specific location, but to a particular service. The NTS number dialled by a caller is ‘translated’ by the network to a geographic number to deliver the call to its destination.
- 3.3 This dispute relates to the amounts passed by BT to NTS providers of services on 0845 and 0870 numbers.³

NTS Regulation

- 3.4 On 25 July 2003 a new regulatory regime for electronic communications networks and services came into force which required the abolition of licences for telecommunications operators.
- 3.5 Following the ‘*Review of the fixed narrowband wholesale exchange line, call origination, conveyance and transit markets*’ published on 28 November 2003⁴ (“the relevant market review”), BT was found to have significant market power (“SMP”) in the markets identified in that review, and certain SMP conditions were imposed on BT including Condition AA11.

BT’s NTS Call Origination Condition

- 3.6 BT’s Condition AA11 ‘Requirement to provide NTS call origination’, published within the relevant market review on 28 November 2003 imposes an obligation to provide NTS Call Origination on fair and reasonable terms, and on such terms, conditions and charges as Ofcom may, from time to time, direct.
- 3.7 Condition AA11 specifies that the only charges that may be made for providing NTS call origination services are:
 - a) A charge for the Call Origination Service used to originate the NTS call;
 - b) A charge for the NTS Retail Uplift;
 - c) A charge for bad debt relating to the retailing by BT of Premium Rate Services calls.

¹ The current version of the NTNP was published on 13 February 2007 at:
<http://www.ofcom.org.uk/telecoms/ioi/numbers/numplan0207.pdf>

² NTS also includes calls to the legacy 0500 (Freephone) and 0345 (local rate) ranges, which are not available for new allocations and are no longer listed in the NTNP. NTS does not include calls to 0844 04 numbers for Surfetime Internet access or calls to 0808 99 numbers for unmetered dial-up Internet access based on FRIACO (Flat Rate Internet Access Call Origination).

³ 0844 and 0871 numbers have different retail pricing arrangements.

⁴ http://www.ofcom.org.uk/consult/condocs/narrowband_mkt_rvw/nwe/fixednarrowbandstatement.pdf

- 3.8 BT's SMP Condition AA11 requires BT to pass the Net Retail Call Revenue (being defined to mean the retail revenue for calls, excluding VAT and after any applicable discounts), less the charges referred to above, to the third party purchasing the NTS Call Origination.⁵ In this Determination, the payments passed on in accordance with Condition AA11 are referred to as outpayments, or "POLOs" (payments to other licensed operators).

How outpayments are calculated

- 3.9 BT is paid by its retail customers (residential and business) for all calls, including NTS calls, and is then obliged to pass the majority of the NTS revenues onto the relevant TCP that terminates the NTS call. BT is allowed to retain only the amounts set out in paragraph 3.7 above.
- 3.10 The calculation of how much BT must pay TCPs is carried out by the TCPs themselves, using a BT-provided tool known as the "NTS Calculator", an interactive spreadsheet that allows TCPs to see how much money they are entitled to be paid for a particular call type. This tool is provided by BT with the sole purpose of assisting TCPs to establish amounts to be paid by BT.
- 3.11 The amount of BT's received retail revenue that it passes on is determined by the NTS formula, which is derived from Condition AA11. The NTS formula provides that BT retains $P - D + C$:
- P is the actual price,
 - D is the Deemed retail price of the call (after discounts and bad debt),
 - C is the pence per minute charge for conveyance over the relevant segment of BT's network plus an uplift to allow for retail costs incurred by the originating operator in handling these calls.
- 3.12 The amount passed on to the terminating provider is given by $D - C$. This outpayment is subject to variations in the discount rate calculated by BT.

⁵ Ofcom intends to conduct a policy review in 2008 into the continued regulatory link between geographic call rates and 0845 charges. This review will consider whether SMP Condition AA11 is still appropriate for 0845 calls. Ofcom has already decided to remove Condition AA11 for 0870 calls from the beginning of 2008, as notified in the April 2006 statement, "NTS: A Way Forward": (http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/).

Section 4

History of the dispute

Changes to BT Retail pricing

- 4.1 On 1 October 2006 BT Retail (“BTR”) changed the way it charged for residential 0845 calls, shifting from a minimum call charge (“MCC”) to a call set-up fee (“CSF”). The MCC had applied only to calls below a certain length (around 90 seconds for 0845 daytime calls, longer for evening and weekend calls), where a pence per minute (“ppm”) charge would result in a figure below the specified minimum charge of ~4.2p (excluding VAT).
- 4.2 BTR replaced the MCC of ~4.2p per call with a CSF of 2.55p (excluding VAT) that applied to all calls. The impact on BT’s residential customers was expected to be a net increase in retail call charges (based on recent call volumes and durations), so BTR wanted to offset this increase by increasing the discounts available to its customers under its “BT Together” call packages.
- 4.3 The change to a CSF occurred only on 0845 residential calls, and 0845 business customers continue to pay a MCC rather than a CSF.
- 4.4 These changes are relevant for NTS outpayments since BT’s NTS call origination conditions require it to pass the retail revenue received for NTS calls onto the TCP less a regulated retention amount.
- 4.5 Therefore changes to the revenue received by BTR for residential or business calls, some of which will be NTS calls, will affect the outpayments made by BT to TCPs.

Outpayment changes notified to TCPs

- 4.6 In order to take account of the forecast changes to revenues received by BTR, BT Wholesale proposed changing the way it accounted for outpayments to TCPs.
- 4.7 The proposed changes were notified to TCPs in an Operator Charge Change Notice (“OCCN”) sent out on 3 August 2006, with the changes proposed to take effect on 1 October 2006.
- 4.8 Subsequently some TCPs signed the OCCN (this is a requirement before BT may amend the outpayments it makes to TCPs) but others failed or refused to sign.
- 4.9 BT referred a dispute to Ofcom for resolution between itself and those TCPs that had not signed the OCCN. A submission was initially made on 20 October 2006 although insufficient evidence (that negotiations had irrevocably broken down) was provided in order to allow Ofcom to open an investigation.
- 4.10 On 16 January 2007 BT re-referred the dispute, along with additional evidence and information. On 5 February 2007 Ofcom opened an investigation into the dispute, setting out the scope of the dispute in a Competition Bulletin as being:

“To determine, in connection with BT’s OCCN of 3 August 2006:
- whether BT has acted consistently with BT’s regulatory obligations in proposing new NTS POLO charges,

Resolution of a dispute between BT and various operators about NTS outpayments

- whether BT has accurately calculated the average discount rates in connection with the retail revenue for calls for the purposes of NTS call origination services provided by BT and, in considering this question, whether each of BT's retail discounts are 'applicable' discounts for the purposes of net retail call revenue."

4.11 This Determination is published on 4 June 2007, to take effect immediately.

Section 5

Submissions of the parties

BT Submissions

- 5.1 BT has made a number of submissions to Ofcom, including copies of correspondence received by BT from the Providers.
- 5.2 BT's referral submission to Ofcom provided:
 - 5.2.1 details of the background to the dispute;
 - 5.2.2 details of negotiations and correspondence between BT and all affected Providers;
 - 5.2.3 a list of Providers that had not signed the OCCN;
 - 5.2.4 copies of presentations made by BT to industry operators and to Ofcom; and
 - 5.2.5 a detailed methodology of how NTS discounts were produced.
- 5.3 Ofcom also requested a number of additional documents and data in order to assess the accuracy of BT's discount rate calculations, and the fairness and reasonableness of its proposed methodology for calculating outpayments.
- 5.4 These additional documents and data were used by Ofcom to produce the analysis contained in Sections 6 and 7 of this Determination.
- 5.5 BT also responded to Ofcom's Draft Determination of 26 April 2007. BT's response is set out in Annex 1.

Other submissions

- 5.6 Ofcom initially received submissions directly from some of the Providers, including C&W, Verizon UK, and Colloquium.⁶
- 5.7 Responses to the Draft Determination have also been received from C&W and Colloquium. These responses are set out in Annexes 2 and 3.

Main concern over discount calculations

- 5.8 Providers who made initial submissions to Ofcom were mainly concerned about the increasing level of discounts as calculated by BT. There was a general concern over the lack of visibility for Providers as to how BT had arrived at the higher discount levels, and concern that there was no way for Providers to verify the accuracy of the higher levels.
- 5.9 In particular, the Providers were keen to gain a level of assurance from Ofcom that discount levels had been accurately calculated, and that the data used correctly captured which calls are eligible for discount.

⁶ See Annex 5 for further details of the Providers.

Additional concerns over payment methodology

- 5.10 A couple of responses received also requested that the principle of removing the short/long call designation should be within the scope of the dispute.
- 5.11 Ofcom recognises that the changes in retail pricing implemented by BT Retail (which are beyond the scope of this dispute) require changes to the outpayment methodology, and Ofcom has considered a number of alternative methodologies in order to assess which is most consistent with BT's regulatory obligation to provide NTS call origination on fair and reasonable terms, and also consistent with Ofcom's Community duties (which include the promotion of competition), which are applicable to the resolution of regulatory disputes.⁷

Responses to the Draft Determination

- 5.12 Ofcom has received 3 responses to the Draft Determination, from C&W, BT and Colloquium.

BT's Response

- 5.13 The main points made by BT in its response are:
- 5.13.1 The benefits of introducing a 2-part charging ("2PC") structure are outweighed by the costs. BT submits that, in 2003, Oftel carried out a cost-benefit analysis of 2PC and found it not to be of net benefit.⁸ BT believes

⁷ In resolving disputes under the Act, Ofcom is required to act in accordance with the six European Community requirements (which give effect, amongst other things, to the requirements of Article 8 of the Framework Directive):

- 1) To promote competition;
- 2) To secure that Ofcom's activities contribute to the development of the European internal market;
- 3) To promote the interests of all persons who are citizens of the European Union;
- 4) To take account of the desirability of Ofcom's carrying out their functions in a manner which, so far as practicable, does not favour –
 - (a) One form of electronic communications network, electronic communications service or associated facility; or
 - (b) One means of providing or making available such a network, service or facility;
- 5) To encourage the provision of network access and service interoperability, to such extent as Ofcom consider appropriate for the purpose of securing efficiency, sustainable competition and maximum benefit for end-users of communications services; and
- 6) To encourage such compliance with the standards or specifications mentioned in section 4 (10) of the Communications Act 2003 as is necessary for -
 - (a) facilitating service interoperability; and
 - (b) securing freedom of choice for the customers of communications providers.

⁸ Policy Review of Two-Part Charging – Statement by the Director General of Telecommunications, 1st September 2003.

<http://www.ofcom.org.uk/static/archive/oftel/publications/licensing/2003/twopc0903.htm>

that there “has been no apparent change to the costs versus benefit position of applying a two part charging based methodology to NTS calls, and, consequently, BT believes that this charging method continues to be inappropriate”.

- 5.13.2 BT raised the issue of reciprocity in its response, and provided further details of its concerns in later e-mails to Ofcom.⁹ BT submits that the imposing of a 2PC outpayment mechanism on it could lead to further (hidden) costs in future for other NTS originators if BT also adopts two part charging for termination of NTS calls originated by other operators. These costs would be incurred in upgrades to billing systems. The likelihood of such costs being incurred depends on the current level of sophistication of other originators’ billing systems.
- 5.13.3 In addition, BT “considers that, should Ofcom determine that interconnect billing systems should be developed to deal with call setup costs as suggested for 0845, then BT will extend this principle to other call types to ensure that all call setup costs are recovered on a fair and equitable basis.”
- 5.13.4 BT submits that any change to the methodology of calculating outpayments would be disruptive at a time of change in the NTS industry, and that there could be an increased risk of further disputes.
- 5.13.5 BT further submits that the only way to resolve some of the issues that lead to ongoing disputes between BT and other CPs is the removal of the link between geographic call rates and 0845 call charges, with the removal of BT’s NTS Call Origination Condition AA11.

Ofcom Response

5.14 Taking each of BT’s main points in turn:

- 5.14.1 In 2003, Oftel found significant potential benefits from 2PC but these were outweighed by the costs, in particular of setting up the billing system to collect call set-up data. However, a number of factors reduce the relevance of this finding to the present dispute:
- a) BT has now introduced two-part charging featuring a call set-up fee at the retail level.
 - b) Ofcom is not requiring BT to adopt two-part charging more widely than for the 0845 outpayments which are the subject of this dispute.

In 2003 Oftel found that the costs of implementation of 2PC in the entire wholesale interconnection charging regime (i.e. not just for NTS or 0845 calls) would be £12m over 5 years, of which £4.5m was BT’s costs. Given that BT has itself chosen to introduce a CSF at the retail level, this implies that its billing systems are already able to handle 2PC (at least at the retail level). The remainder of the £12m costs relate to other CPs.

⁹ Reciprocity in termination charges would require the rates which BT charges to other originating operators for termination of 0845 calls to be equal to the rates which BT pays to other terminating operators for termination of 0845 calls originated by BT.

In the Draft Determination Ofcom stated that it “does not have evidence concerning the costs of implementation by BT and Providers” of 2PC, and sought comments from all interested parties. The responses from C&W and Colloquium suggest that the costs of implementation would not be disproportionately high (for example, C&W submit that they would be “able to implement the necessary changes to our billing systems with a minimal level of cost and disruption.”)

- 5.14.2 The response to the Draft Determination received from C&W suggests that the billing system costs are proportionate. Given that Option 3 requires only the counting of number of calls and total minutes, it seems likely that the costs would be proportionate. In contrast, the previous NTS outpayment methodology (see paragraph 6.5) required TCPs to calculate the number of short calls, the number of long calls and the total duration of these calls.
- 5.14.3 The responses received by Ofcom to the Draft Determination do not suggest that introducing 2PC for NTS origination would be a problem for other originating operators.
- 5.14.4 Ofcom accepts that there is a risk that changing to a different outpayment methodology would be disruptive; however, it is unlikely to be any more or less disruptive than the changes proposed by BT in its blended rate methodology.
- 5.14.5 Ofcom has already committed to removing NTS Call Origination Condition AA11 on the 0870 number range in early 2008¹⁰, and intends to begin looking at a similar process for 0845 at the same time.

C&W Response

- 5.15 The main points made by C&W in its response are:
 - 5.15.1 C&W submitted that Option 3 is the fairest methodology and that Option 1 is based on an ‘opaque’ blended rate that only BT has visibility over. It further submitted that any change to ppm rates will attract disputes as Providers are unable to determine whether such changes may be discriminatory.
 - 5.15.2 C&W believe that there would be no significant cost to them of billing for 0845 outpayments in line with Option 3: “Cable&Wireless is able to implement the necessary changes to our billing systems with a minimal level of cost and disruption.”
 - 5.15.3 C&W also submit that a precedent has been set for this type of 2PC in the Directory Enquiry (“DQ”) arena. DQ services are already billed through a connection charge and subsequent ppm rate, and C&W does not believe that applying this to the NTS arena poses any unique issues for an efficient Provider.
 - 5.15.4 C&W submits that an efficient Provider should be able to implement the necessary changes with little additional cost and within a reasonable timeframe.

¹⁰ As notified in the April 2006 statement, “NTS: A Way Forward”: (http://www.ofcom.org.uk/consult/condocs/nts_forward/statement/).

Ofcom Response

5.16 Dealing with each of C&W's points in turn:

- 5.16.1 Both Option 1 and Option 3 involve the use of a blended ppm rate that is calculated by BT and notified to the NTS industry by means of an OCCN. Therefore the use of a blended rate in Option 1 should not be a reason to prefer Option 3.
- 5.16.2 Ofcom welcomes clarification from C&W that, in C&W's view, the costs of implementing Option 3 by C&W would be minimal. In the absence of contradictory responses from other NTS CPs, this evidence suggests that the costs of implementing Option 3 would be proportionate.
- 5.16.3 Ofcom's reasoning around the selection of Option 3 is based on its analysis of the 0845 number range, and any comparisons with DQ services are beyond the scope of this dispute.
- 5.16.4 The question of cost of implementation may not necessarily hinge on the relative efficiency of a Provider as much as the focus and size of its NTS business. For instance, BT and C&W are two of the largest operators in the NTS market, and it is therefore reasonable to assume that their billing systems are already relatively sophisticated. However, Ofcom notes that the response received from Colloquium (a relatively smaller operator in the NTS market) does not suggest any inherent problems with implementation costs for Option 3.

Colloquium Response

5.17 Colloquium made two points:

- 5.17.1 It welcomes the matching of outpayments with revenues as closely as possible, and believes that Option 3 does provide the fairest methodology.
- 5.17.2 It raises the issue of recognition of business versus residential calls, and believes that there will continue to be disputes until TCPs are able to recognise which is which when they terminate an NTS call.

Ofcom Response

5.18 The issue of being able to determine business from residential calls falls beyond the scope of this dispute.

Section 6

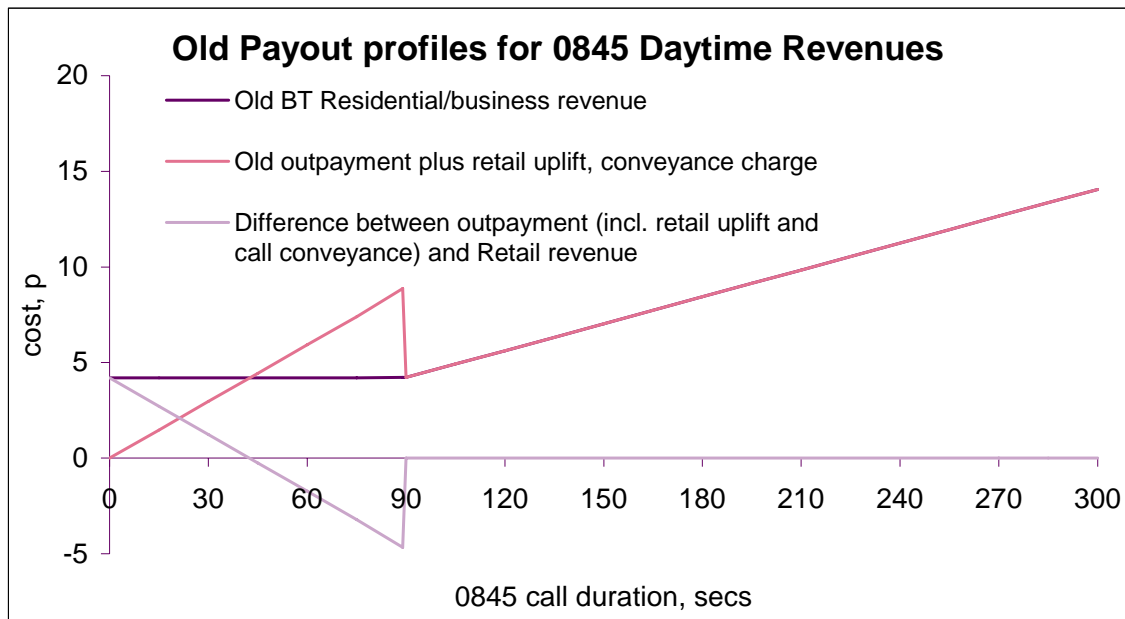
NTS outpayment methodology

- 6.1 BT Retail's prices for calls (including calls to NTS numbers) are not regulated directly. The price changes made by BTR on 1 October 2006 were made in this context.
- 6.2 However, the resultant changes to NTS outpayments that follow any such pricing movements are subject to regulatory scrutiny.
- 6.3 Ofcom notes that the change of calculation methodology is only relevant for 0845 NTS calls and does not apply for 0870 calls, where the NTS outpayment calculation methodology has always been based on a blended average ppm rate, and there is no change.
- 6.4 As a general rule, Ofcom believes that, on the facts of this case, the closer the correlation between NTS retail call revenues and outpayments, the fairer and more consistent with Ofcom's duty to promote competition the method used to calculate them. A methodology that more closely matches the attendant NTS outpayments to an NTS call with the revenues received by BT will best support the objectives of the NTS regime.

The previous NTS outpayment methodology

- 6.5 Prior to the OCCN that triggered this dispute, TCPs calculated the payments they were due based on the number of short and long calls they received, and the number of seconds of all the calls received. TCPs received a certain ppm rate for short calls (i.e. those within the duration of the MCC), and a lower ppm rate for long calls.
- 6.6 Since residential and business calls were priced at the same headline rate, and using the same system, there was no need for TCPs to differentiate between residential and business NTS calls. Therefore all that the billing systems of TCPs needed to do was calculate the number of short calls, the number of long calls, and the total time generated by the calls.
- 6.7 The TCP would then submit these figures to BT along with a calculation of outpayments due, using the NTS calculator, and BT would pay the calculated amount.
- 6.8 The payout profile (based on 0845 daytime calls) comparing BT's residential and business NTS revenues with its NTS outpayments, was:

Figure 1: Payout profile for 0845 Daytime revenues using previous BT methodology



Source: NTS Calculator, BT data

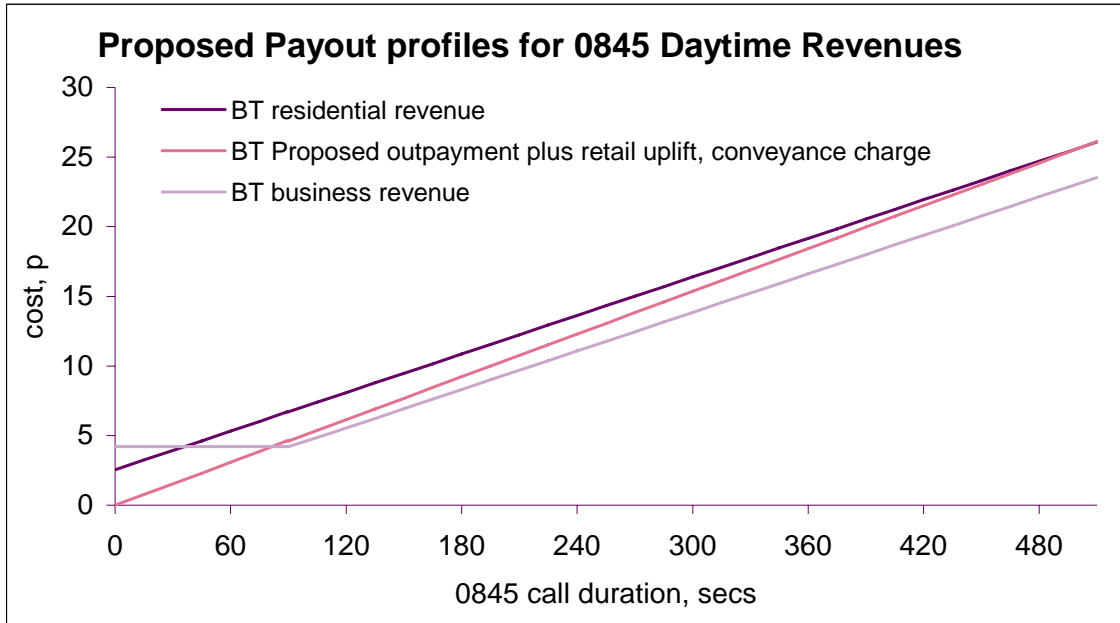
- 6.9 At call durations below the short/long call cut-off point (i.e. ~90 seconds for 0845 daytime calls) the payout profile is determined by an average rate of ~5.9ppm that results in outpayments (plus regulated retention) being very different from revenue, which is constant at 4.2p per call.
- 6.10 Above 90 seconds, the payout profile exactly matches the revenue profile.
- 6.11 In Figure 1, BT Retail's revenue streams for residential and business calls are the same, and are depicted by the "Old BT Residential/business revenue" line in the figure above.

Option 1: BT's proposed outpayment methodology

- 6.12 Since residential calls will attract a CSF and business calls will attract a MCC, and the Providers are unable to differentiate between residential and business calls (see Para 6.6 above), it is necessary for BT to construct a new outpayment system that allows revenues to be allocated as fairly as possible.
- 6.13 In an OCCN dated 3 August 2006 BT set out the new proposed methodology, allocating revenues based on an average ppm rate across all call lengths (whether business or residential), eliminating the need for a short/long call distinction for TCPs.
- 6.14 The new methodology calculates outpayments based on ppm rates across call types, business or residential, such that there will be single rates for 0845 daytime (with no distinction between short or long calls), 0845 evening and 0845 weekend, and similarly three separate rates for 0870 daytime, evening and weekend calls (although for 0870 this does not represent a change from before).
- 6.15 The proposed methodology is simpler for TCPs, since it no longer requires them to differentiate between short and long calls, and total call duration is all that is required to calculate outpayments.

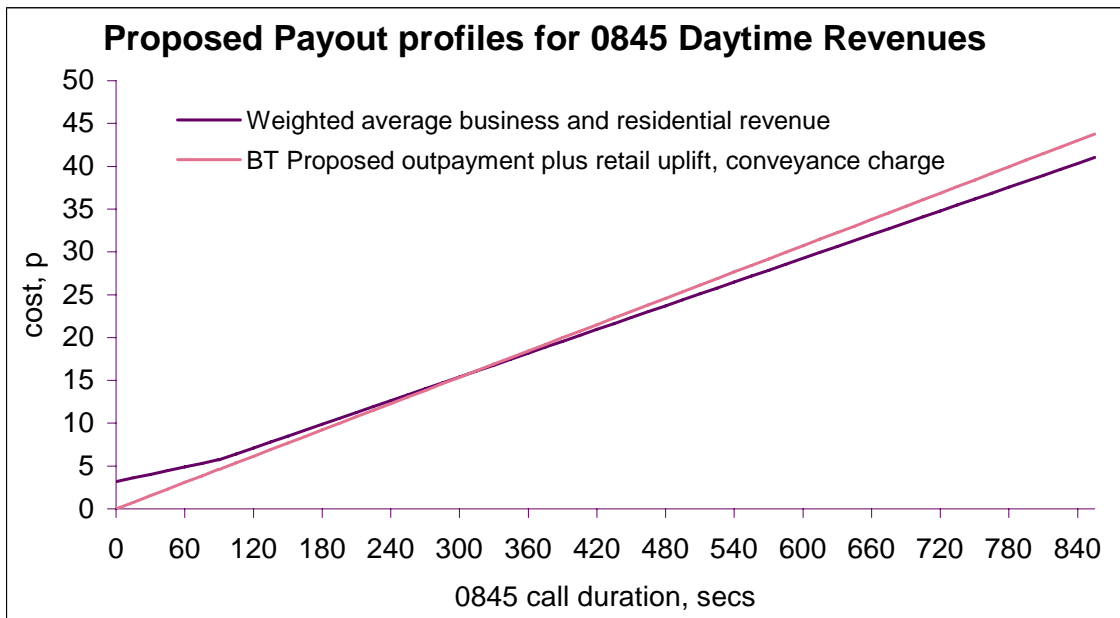
6.16 However, the methodology will disadvantage those TCPs that have a greater than average proportion of short duration residential calls, where outpayments are below BT's revenue after subtracting the originating operator's retention, as shown by the figure below.

Figure 2: Payout profile for 0845 Daytime revenues using proposed BT methodology



Source: BT data, NTS calculator

Figure 3: Weighted average revenue versus BT proposed outpayments for 0845 Daytime



Source: BT data, NTS calculator, Ofcom analysis

6.17 Using a ppm rate to calculate outpayments means that the outpayment line will always begin at the origin of the graph (i.e. a call of zero seconds will not result in

any outpayment), whereas the residential revenue line will begin at 2.55p (i.e. the CSF).

- 6.18 As call durations increase, because the average ppm rate for outpayments takes into account the CSF, the value of outpayments increases faster than retail revenue, until at the average call duration, the outpayments (plus regulated retention) marginally exceed residential revenue.
- 6.19 Therefore, for all residential NTS calls below the average length, BT will retain a greater proportion of its received revenues, whilst above the average call length it will retain a lower proportion. On average, across all calls, BT pays out (and TCPs receive, in aggregate) the same as would occur under the previous outpayment methodology.
- 6.20 In Figure 3 above, calculating a weighted average revenue line as an amalgamation of the business and residential revenues (weighted by revenue) allows a closer comparison of how revenues are allocated as outpayments on an average basis. Ofcom notes that this sort of average analysis masks the effects on individual TCPs, but helps inform as to the question of matching revenues and payments on an aggregate basis.

How do BT's proposed methodology changes affect TCPs?

- 6.21 All providers are adversely affected by new, higher discount rates, which necessarily reduce payments.
- 6.22 The table below shows how 8 TCPs (chosen for their size and for their different call profiles) will experience changes to their monthly NTS termination revenue as a result of BT's proposed changes notified in the 3 August 2006 OCCN.
- 6.23 The effect of new discount rates is to consistently lower revenues for all TCPs by 12-14% (although noting that there may be minor rounding errors in the data), whereas the effects of the new CSF/blended rate methodology differ between TCP.
- 6.24 Those TCPs that have a high percentage of short duration calls are adversely affected by the new methodology, while those that have a relatively low percentage of short duration calls benefit from the new methodology.

Table 1: Effects of new methodology on monthly 0845 outpayments to selected TCPs

TCPs	Changes to monthly outpayments			% Short duration
	Effect of CSF/blended rate methodology (old discount rates)	Effect of new discount rates alone	Overall effect - new discount rates and new methodology	
[>]	4%	-13%	-9%	8.7%
[>]	-15%	-12%	-26%	22.6%
[>]	-3%	-12%	-16%	14.0%
[>]	4%	-13%	-9%	8.8%
[>]	7%	-14%	-7%	7.1%
[>]	7%	-14%	-7%	6.5%
[>]	15%	-14%	1%	0.4%
[>]	0%	-13%	-13%	13.1%

Source: BT data, Ofcom analysis

Other options

6.25 Ofcom has examined other options available to BT to calculate outpayments, and assessed the suitability of each. None of the options (including BT's proposal, comprising Option 1) perfectly matches revenues with outpayments. The additional options identified are as follows:

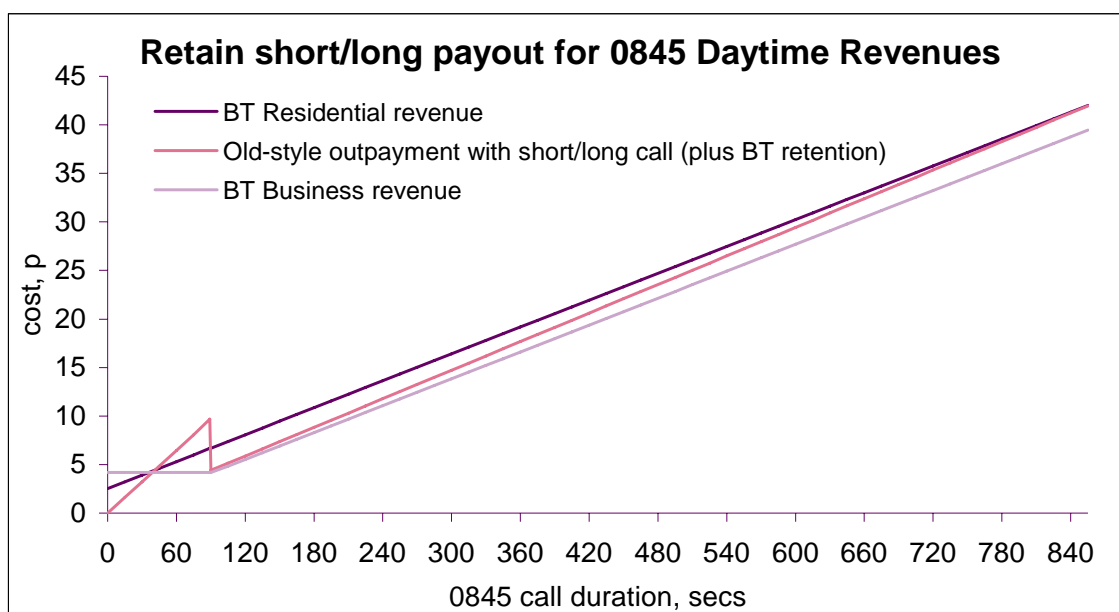
- Option 2: Retaining a short/long call duration for 0845 outpayments.
- Option 3: Introduction of a fixed call set-up payment for all 0845 calls, business or residential.

Option 2: Retaining the short/long call duration for 0845

6.26 Retaining a short/long call duration for all 0845 calls, whether they are residential calls (which all attract a fixed CSF), or business calls (which still attract a MCC), would create a situation where revenue and outpayments are reasonably well matched above the short call duration, but there is a clear mismatch between revenues and outpayments for short calls.

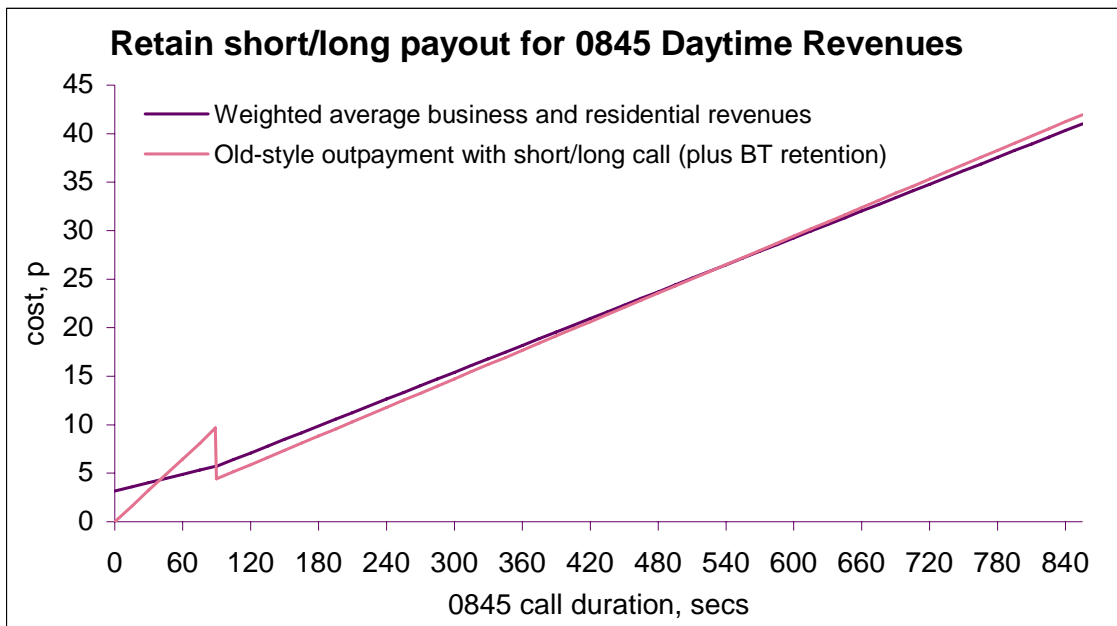
6.27 Ofcom believes that the mismatch between revenues and outpayments means that Option 2 would be likely to have a discriminatory impact on some Providers, and therefore Option 2 is not a viable option in this case.

Figure 4: Option 2 - Retaining the short/long duration for 0845



Source: BT data, Ofcom analysis

Figure 5: Option 2 - Weighted average revenues versus short/long outpayments



Source: BT data, Ofcom analysis

6.28 Retaining a short/long call duration would be relatively simple to implement and would ensure some consistency with the prior methodology, but does not give a precise match between revenues and outpayments for short calls and therefore may not be the fairest means of allocating revenue.

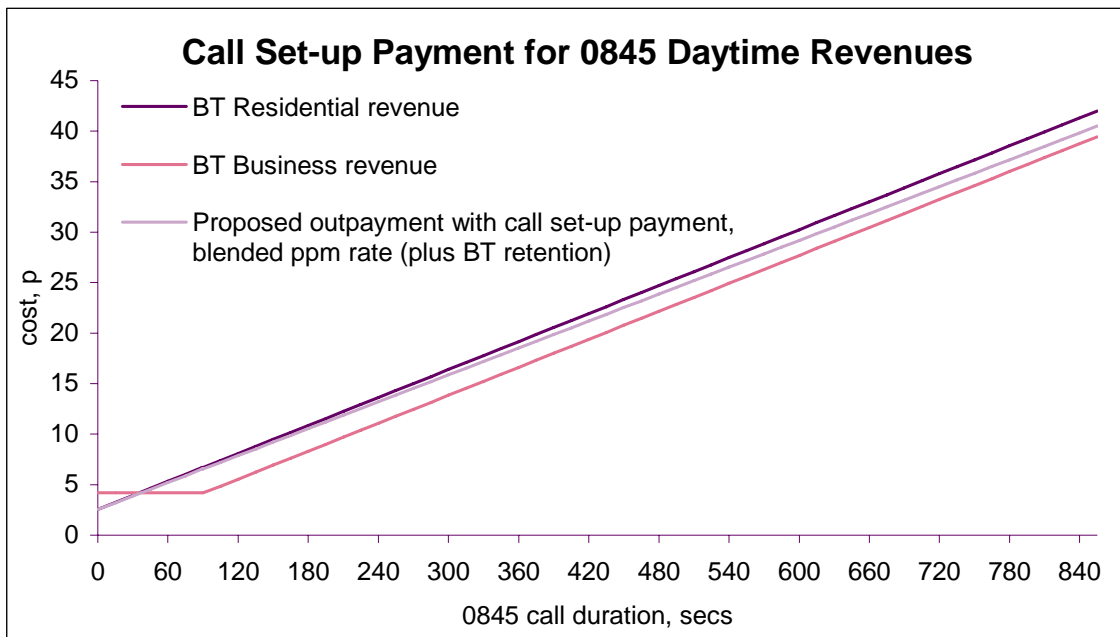
Option 3: Introducing a fixed call set-up payment for all residential or business calls

6.29 If a fixed call set-up payment (to match the call set-up fee of 2.55p) were to be introduced for residential 0845 calls, it would also need to be introduced for business calls because Providers are unable to differentiate between business and residential calls.

6.30 The introduction of a fixed call set-up payment for each call would require a recalculation of the ppm outpayment rates to ensure that BT continued to pay out the same proportion of its revenue as under its proposed blended rate ppm rate.

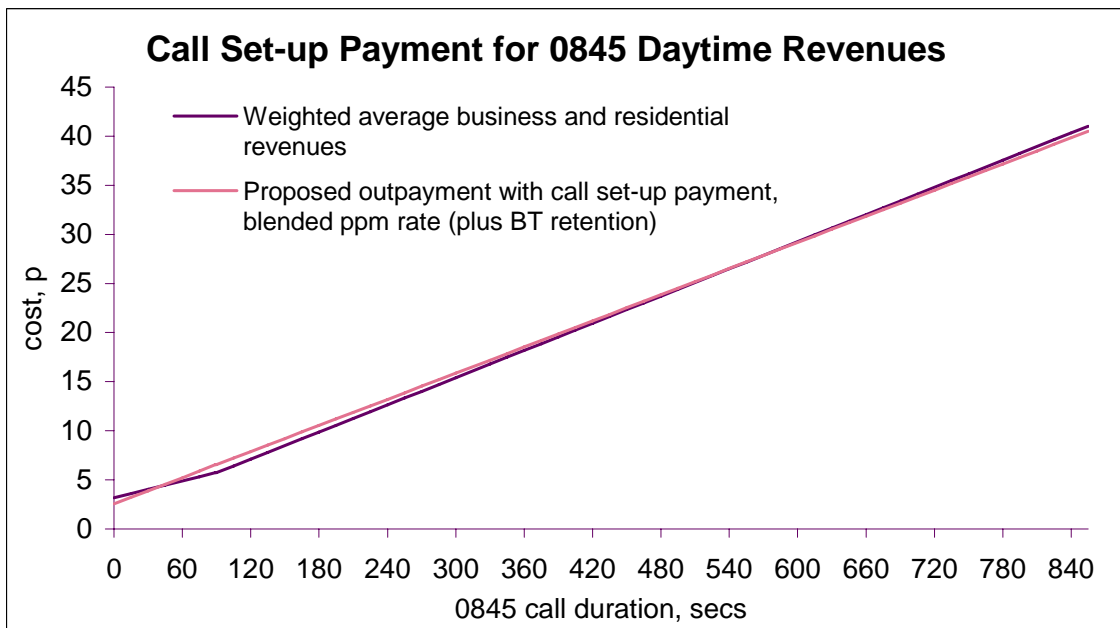
6.31 The profile would look as shown in the figure below. The outpayments would very closely match residential revenues at lower call lengths, but as call length increased, outpayments would tend towards (lower) business revenues.

Figure 6: Option 3 - Fixed call set-up payment for all residential and business calls



Source: BT data, Ofcom analysis

Figure 7: Option 3 - Blended revenues versus outpayments



Source: BT data, Ofcom analysis

- 6.32 Such a payment methodology appears likely to provide the closest match of outpayments to revenue.
- 6.33 Ofcom notes that such a methodology may be less simple to implement than continuing with a short/long duration or a blended ppm rate (simply because it involves introducing a new concept for Providers, i.e. a fixed charge) but it should not involve the need for any major changes to billing systems, and should therefore be cheap for Providers to implement. In fact, this methodology would reduce the

calculations required by Providers, when compared to the methodology used prior to October 2006.

- 6.34 As noted above, the responses received to the Draft Determination suggest that the cost of implementation for Providers would be likely to be proportionate.

Conclusion – Option 3 appears to be the fairest methodology

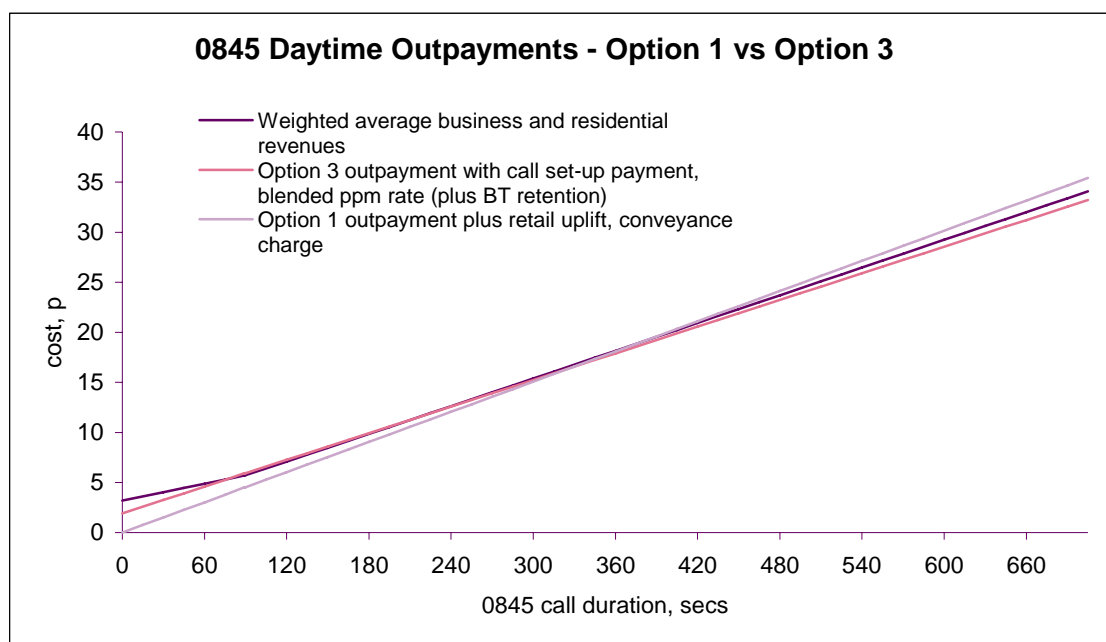
- 6.35 No methodology considered by Ofcom perfectly aligns revenues and outpayments. In addition, the virtues of a particular methodology need to be considered in the light of the likely implementation costs.
- 6.36 Ofcom considers that Option 3 is the most appropriate option and consistent with Ofcom’s duties since it provides the closest match of NTS outpayments to revenues, and therefore is likely to afford Providers the fairest allocation of NTS outpayments available. This is consistent with Ofcom’s duties as it reflects the purpose of the NTS regime and the NTS call origination condition which aims to promote competition and innovation in service provision.
- 6.37 Ofcom has considered the views of the parties before proceeding to this final Determination.

Table 2: Advantages and disadvantages of different methodologies

Methodology	Advantages	Disadvantages	Winners/Losers
Option 1: BT proposed methodology – blended average ppm rate	Simple. Easy for TCPs to incorporate into billing systems (i.e. no changes needed).	TCPs with predominantly very short duration calls are disadvantaged.	Providers with a relatively high % of long residential calls will benefit.
Option 2: Keeping the short/long call duration for 0845	Continuity.	The duration of short call for residential is arbitrary. The payout profile below the short call boundary does not closely resemble the revenue profile.	We believe this option ought to be broadly neutral for Providers when compared to the current system.
Option 3: Introduction of a call set-up payout to match the call set-up fee	Close match of revenues with outpayments for residential calls.	Introducing a fixed payment for business when revenues included a MCC results in a revenue mismatch.	This option may benefit operators with shorter durations than average (although not very short durations).

- 6.38 A comparison of Option 1 against Option 3 shows that outpayments under Option 3 follow revenue more closely than under Option 1, as shown by Figure 8 below.

Figure 8: Option 1 vs Option 3



Source: Ofcom analysis, BT data

6.39 Under Option 3 the ppm rate paid on each minute of calls will be lower than under Option 1, and so BT has recalculated these rates. Ofcom has reviewed these rates and is content that they adequately reflect the reduced variable-rate outpayments (which reduce in line with fixed-amount call set-up payments).

6.40 The amended pence per minute rates for 0845 outpayments shall be as follows:

a)	Daytime	3.2741
b)	Evening	0.9485
c)	Weekend	0.8652

6.41 These rates were calculated by BT and notified to major NTS operators through the NTS Focus Group on 10 May 2007.

Section 7

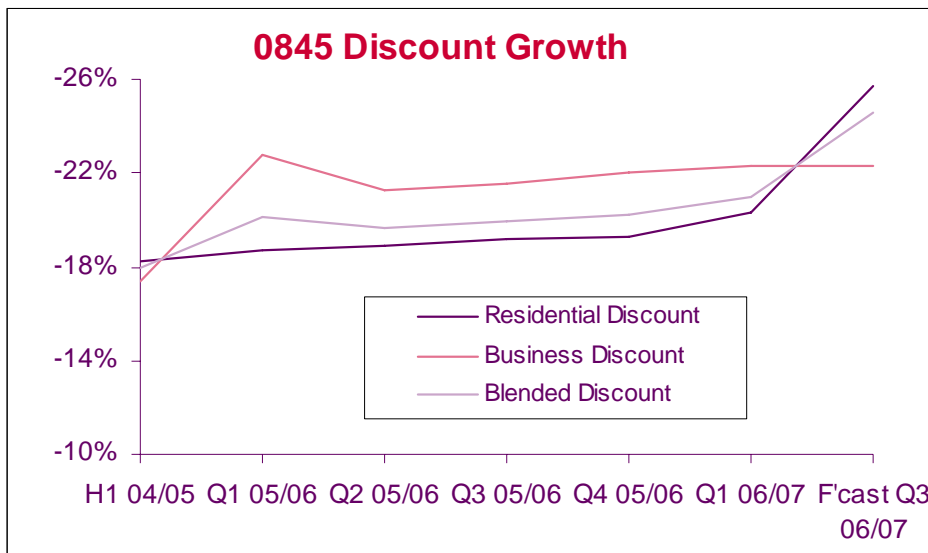
Discount rate calculations

Historic trends suggest discount rates are rising

7.1 BT has provided evidence showing that discount rates have risen over the last couple of years as uptake by consumers of inclusive calling packages has increased. In addition, when the CSF came into effect, the introduction of more discounts into existing call packages increased discount rates further.

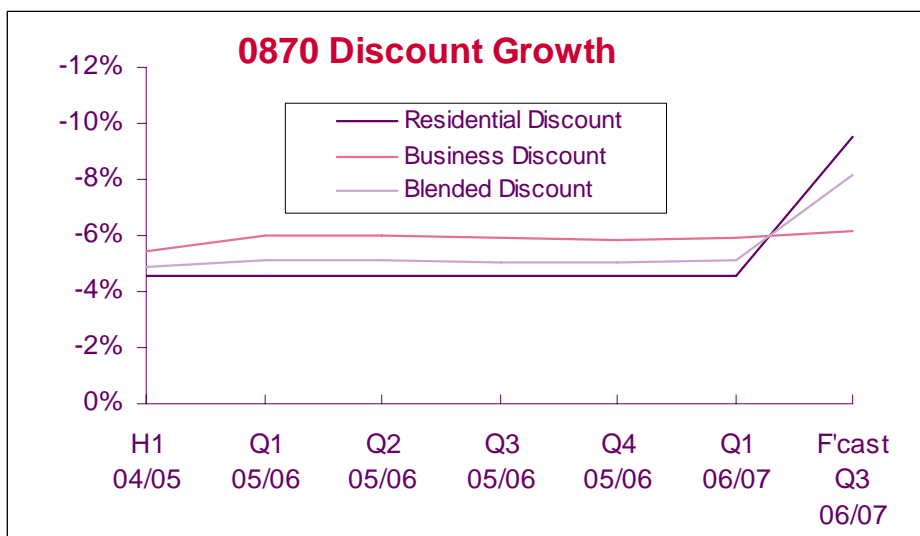
7.2 As a result the predicted future discount rates that BT announced in the disputed OCCN have increased significantly, as shown by the figures below.

Figure 9: 0845 Discount Rate movement



Source: BT data

Figure 10: 0870 Discount Rate movement



Source: BT data

How does BT estimate future discount rates?

- 7.3 At any point in time BT knows its most recent historic quarterly data, but not the future quarter data. Since OCCNs are prior notifications relating to future time periods BT has to estimate its expected future discount rates based on historic data.
- 7.4 In order to estimate future revenue from October 2006 onwards, BT used quarterly NTS data from Q1 06/07 (i.e. April to June 2006) and amended it to take into account expected changes in revenues.
- 7.5 In order to estimate discount rates for the following period, BT used its most recent call data (minutes, number of calls, revenue, etc), looked at the effect of introducing the new payout methodology with a CSF, and derived the total expected revenues before comparing that revenue with a figure calculated from headline BTR prices.
- 7.6 The difference between the two (i.e. headline rates multiplied by minutes vs adjusted recorded revenue) allows BT to deduce average discount rates, and thereby to generate a deemed price.
- 7.7 For 0845 residential calls, the difference between actual received revenues and revenues based on reported calls and minutes at headline rates was [X]%, i.e. this was the deemed discount rate.
- 7.8 For 0845 business calls the difference was [X]%, giving a blended average discount rate on 0845 of [X]% in Q1 06/07.

Table 3: Discount rate calculations

0845 £m	Actual			With Call Set-up Fee		
	Residential	Business	Total	Residential	Business	Total
Revenue at headline rates						
Calling Plan discounts						
Fee-based discounts less fees	[X]		[X]	[X]		[X]
Revenue less discounts						
Discount %						24.6%

0870 £m	Actual			With Call Set-up Fee		
	Residential	Business	Total	Residential	Business	Total
Revenue at headline rates						
Calling Plan discounts						
Fee-based discounts less fees	[X]		[X]	[X]		[X]
Revenue less discounts						
Discount %						8.2%

Source: BT data

- 7.9 As shown in Table 3 above, with the introduction of a CSF instead of a MCC, BT expects revenues for 0845 residential calls to increase by [X]% from £[X]m to £[X]m.
- 7.10 BT Retail has amended BT Together calling plans so that the impact for consumers from the CSF introduction is only a [X]% increase in overall revenue on 0845. Therefore by increasing headline revenues by [X]% and increasing the estimated figure for revenues after discounts by [X]%, BT can deduce the calling plan discount amounts.

- 7.11 For 0870 the increased revenue impact of a CSF is [X%] while the impact of new BTT rates and the CSF is [X%].
- 7.12 Based on the evidence presented by BT and the additional analysis that Ofcom has produced, Ofcom has no reason to believe that BT's predicted future NTS discount rates have been incorrectly calculated.

Annex 1

BT Response to the Draft Determination

BT response Ofcom Draft Determination to resolve a dispute between BT and various Communications Providers about NTS outpayments.

Please find below BT's response to the above draft document received from Ofcom on 26th April 2007.

1. Summary

BT welcomes Ofcom's proposal to determine that the BT NTS discount rates as set out in the 3rd August 2006 OCCN are correct and therefore should be applied to NTS Communication Providers' (TCPs) outpayments as from 1st October 2006.

BT is also pleased to note that Ofcom regards BT's proposed methodology (Blended rate) as a fair and reasonable method of calculating NTS outpayments (POLOs).

BT would be supportive of any alternative to the blended rate methodology for calculating NTS outpayments provided that its implementation is based on sound economic factors which are fair, reasonable and cost effective. BT recognises, whilst each of the calculation options, as described in the draft direction, is new to BT, each has different distribution effects across individual CPs' models.

No ideal methodology has yet been identified for the calculation of NTS POLOs and all of the proposed options including Option 1 present various advantages and disadvantages.

Any calculation methodology applied to NTS POLOs will not affect the amount of revenue in the overall sum available to be distributed to NTS terminators, a calculation methodology can only determine how the NTS revenue is distributed to CPs. Consequently each of the calculation methods will produce a variety of commercial outcomes for CPs. It is important to recognise that the potential to influence the distribution of the NTS revenue 'pot' to a more commercially attractive level is a key driver for some CPs to enter into NTS OCCN driven disputes. BT strongly believes that the removal of this incentive cannot simply be achieved via voluntary methods such as increasing transparency. This could only be guaranteed by the removal of the regulated link between NTS outpayments and BT Retail prices¹¹ to achieve any significant reduction in NTS OCCN driven disputes.

After consideration of the issues identified with Options 2 & 3, BT believes that the blended rate, Option 1, should continue to be the application used for the calculation of POLOs. This option provides a fair, simple and cost effective way of distributing NTS call revenues to TCPs'.

2. Ofcom proposals for NTS outpayment (POLO) calculation methodology

Option 1

0845 is unique in that there are two levels to TCPs' POLOs based on short and long call durations. The effective price of a "short" call is calculated by looking at all calls where the duration of the call is less than that which would, at the headline rate, result in a charge equal

¹¹ NTS Call Origination Condition AA11

to or greater than the minimum fee.

However, where a set up fee (SUF) replaces the minimum charge this removes the “short/long” call distinctions. It is BT’s conclusion that 0845 should be treated in the same way as all other NTS calls – that is by calculating a true weighted average pence per minute (ppm) rate (addressing the set up fee). Whilst it is true that a call setup charge will result in higher average ppm rates for short calls than for long calls¹², with the absence of a minimum call charge there is no mathematical means of defining what the threshold duration of a “short call” should be. Therefore, the concept is not valid.

In the example below BT has applied a theoretical retail price to Option 1 and Option 3. The illustration does not include the discount (24.6% to the whole call charge) or subtract the Retail Uplift (on a per minute basis).

Fig 1

Option 1 rates (fully blended retail rates)				Option 3 (SUF per call + rebledned ppm rates)			
	D	E	W/E	SUF	D	E	W/E
	3.6726	1.1664	1.0872	2.5500	3.2741	0.9485	0.8652
1m call	3.672628	1.166365	1.08715		5.82	3.50	3.42
5m call	18.36314	5.831825	5.435751		18.92	7.29	6.88
10m call	36.72628	11.66365	10.8715		35.29	12.04	11.20

BT does not consider that the blended rate methodology is the only one which could be applied to NTS outpayments. BT is obliged¹³ to pass all revenues, less a regulated retention, through to TCPs. BT’s position, is therefore, financially neutral, providing the distribution of NTS revenues is achieved by the application of a calculation methodology which is fair, reasonable and, administratively cost effective.

Ofcom raises concerns that the POLO calculation methodology should represent the revenues collected as closely as possible. BT assumes that, in particular, this is intended to mean that POLOs should represent the structure of retail charging as well as the resulting total revenues (the latter is not in question) It is suggested within the draft Determination that a blended rate methodology is not the best method to achieve this. However, since Business customers are not charged a SUF and NTS outpayments do not distinguish between calls originating from business or residential or even transit customers, it is not possible to reflect both charging structures accurately in one form. Indeed, Ofcom’s Option 3 requires an artificial application of the SUF to business calls with an added complexity of offsetting this with a reduction in the effective ppm headline rates for the purpose of calculating POLOs.

The Option 1 blended rate methodology is the only methodology amongst those proposed by Ofcom that is based on the actual charges made by BT Retail to its residential and business customers.

¹² This results in a pro rata distribution of 0845 revenues

¹³ Regulatory obligation under NTS Call Origination condition AA11

Further, Option 1 removes entirely any incentives for artificial stimulation of short calls¹⁴. It is a system which is already in place and which has been accepted by the majority of CPs. It requires no change to CPs charging methodology or billing systems and underpins the retrospective nature of interconnect billing.

Option 1 represents the status quo; therefore there is no requirement for any implementation costs or an increase in CPs' administrative costs. As a consequence it is the least disruptive of all the options proposed.

In summary, Option 1 is a tried and tested methodology, historically accepted and trusted by TCPs. It presents a fair and simple means of delivering POLO revenues, as is endorsed by Ofcom in the draft Determination. Most significantly, it supports the current reciprocal charging regime for NTS traffic

BT believes that Option 1 still presents the fairest and most reasonable method for calculating TCPs' NTS outpayments.

Option 2

Option 2 proposes the reintroduction of a duration element to the Call Set Up fee (SUF) ppm charge. Ofcom does not state how this would be achieved or implemented.

As the application of a SUF means that there is no minimum call charge element to the call, there is no logical duration after which a call could be considered a long call. Whatever time period is chosen could prove to be commercially detrimental to certain TCPs. Regulatory constraints¹⁵ prohibit BT from setting an arbitrary duration element to the charge. If this option were to be adopted it would require the duration element to be set by the regulator to avoid the risk of further disputes.

If there are different time periods for different times of day there is the further complication of calls crossing time period boundaries, i.e. if a call starts one second prior to a new time period boundary (Day/Evening/Week end): the fixed SUF element charged by BT Retail would be that aligned to the initial time period, any long/short element would cause the duration threshold to be warped to cater for the different retail rates in the different time periods. For example, if the daytime long/short threshold is 30 seconds and the evening threshold 60 seconds, a call starting 15 seconds before the time period change would get 45 seconds at the "short" rate.

To ensure that the NTS outpayment replicable system is maintained the Option 2 methodology would have to be adopted universally by NTS CPs at the same time. The above issues could result in billing system changes which could impact on the ability to adopt this method quickly or in unison across the NTS industry.

Consequently, whatever time period is chosen could prove to be commercially detrimental to certain TCPs. Regulatory constraints prohibit BT from setting an arbitrary duration element to the charge. If this option were to be adopted it would require the duration element to be set by the regulator to avoid the risk of further disputes.

Option 3

¹⁴ Through the application of a blending of call revenues

¹⁵ SMP call origination conditions prohibit undue discrimination

Option 3 proposes that a fixed SUF of 2.55p should be applied to NTS calls from both BT's residential and business customers,¹⁶ along with an adjusted ppm charge.

This option essentially introduces a two part charging structure for the calculation of NTS outpayments. The two-part charging method for calculating NTS POLOs was the basis of a dispute raised by Energis in 2002 which ultimately led to a policy review on the subject by OfTel in 2003¹⁷. On conclusion of the review OfTel found; "that it is unlikely that the benefits of 2PC significantly outweigh the costs." As a consequence, BT was not bound to implement this methodology for NTS traffic at that time. There has been no apparent change to the costs versus benefit position of applying a two part charging based methodology to NTS calls, and, consequently, BT believes that this charging method continues to be inappropriate.

Impact on NTS outpayment reciprocity

Option 3 presents a number of issues not least the issue of universal uptake of this methodology by all NTS CPs, including international Operators. The NTS charging regime relies strongly on a reciprocal charging mechanism. For reciprocity to be maintained, NTS Originating CPs (OCPs) would have to adopt a reciprocal SUF arrangement for NTS charges. This may not fit with affected CPs business models as OCPs may not have a retail pricing model which easily maps to Option 3 elements i.e. no SUF in the OCP's retail rate with consequent implications on revenue margins.

Removal of a reciprocal charging model would result in increased complexity in CPs' interconnection arrangements. A non reciprocal methodology would prove especially difficult in the billing of NTS transit traffic. There would also be the issue of how to manage internationally originated NTS calls with the increased risk of arbitrage.

Billing

The introduction of Option 3 could result in billing development requirements for CPs. BT has identified that Option 3 will require a change to BT's GenIUS billing system.. Also, depending on CPs' own billing designs for INCA/CLI billing, there may be further impact on BT and CPs to include call count information within the INCA/CLI transit adjustment data. These costs would be incurred at a time of significant change in the NTS regime.

BT considers that, should Ofcom determine that interconnect billing systems should be developed to deal with call setup costs as suggested for 0845, then BT will extend this principle to other call types to ensure that all call setup costs are recovered on a fair and equitable basis. BT is happy to meet with Ofcom to discuss other affected call types

Impact on CPs POLOs

BT has re-calculated the NTS POLO ppm rate to take account of the fixed SUF element as presented in Option 3. fig 2 below gives a comparison of the ppm charge as calculated using the blended rate methodology and that calculated using the Option 3 methodology. To provide a full comparison the 2.55 fixed SUF charge would have to be added to each call.

Fig 2

Ofcom Proposed Option 3 - clarified version (Equinox)

	DAY	EVE	W/E
Blended ppm	3.2741	0.9485	0.8652

¹⁶ BT Retail business NTS call charges still maintain the Minimum Call Charge with a duration based ppm rate

¹⁷ Policy Review of two-part charging -1st September 2003

Original Blended Rate with Equinox Impact

3.6726 1.1664 1.0872

Option 3 continues to present the opportunity of an improved level of revenue for those TCPs who terminate a higher proportion of short duration calls (see fig 1).

Disruption and potential for further disputes

Should this proposal be determined by Ofcom, BT would have to re-calculate TCPs POLOs using the new methodology. The revised rates would have to be re notified. CPs who are commercially disadvantaged by the new rates may choose to either reject or ignore the OCCN. This would inevitably lead to further disputes.

3. Discounts and Potential for further disputes

BT welcomes Ofcom's finding that the calculation of the revised NTS Discount rates as presented in the 3rd August 2006 OCCN are correct and acceptable.

Potential for further disputes is a concern for Ofcom

BT has done much to provide as much transparency as possible to TCPs prior to the issue of 3rd August 2006 OCCN and afterwards. BT cannot see what more could have been provided to TCPs without supplying the detailed nature of BT's customer profiles. This is obviously highly sensitive commercial data, the release of which would place BT at a commercial disadvantage to its competitors.

BT would welcome Ofcom's view on what further information should be provided which would satisfy TCPs' request for more 'transparency' in these matters, subject, of course, to commercial confidentiality.

As stated within BT's referral, BT has made numerous attempts in the past to develop a process which would alleviate the potential for disputes. All suggestions made by BT, including the offer to have BT's calculations examined by an external auditor, were not acceptable to either the NTS community or to Ofcom. Even if this offer had been implemented, it would not be a barrier to those TCPs who chose to reject or ignore an OCCN on commercial grounds.

CPs will calculate the impact of changes to NTS outpayments against their own commercial model. If the impact is not attractive some CPs may choose to reject or ignore the OCCN. Avoidance strategies may be adopted to delay the implementation of the new rates for as long as possible. In such circumstances it is unlikely that any level of transparency would be effective in reducing disputes. There is also no advantage to such CPs to develop or adopt a method which removes the delay that regulatory dispute resolution brings to new rate implementation. Disputes may be viewed as an opportunity by some CPs to ameliorate their cash flow position.

4. Conclusion

BT continues to support the application of Option 1 for the calculation of 0845 NTS outpayments.

Ofcom concluded that, based on responses to the BT referral, that the main concern raised by CPs was not the application of a blended rate methodology for the calculation of NTS

outpayments. CPs main concern was the level of discount rates as proposed within the 3rd August 2006 OCCN. BT's discount rate calculations and source data have subsequently been found by Ofcom to be free from error and miscalculation.

Any change to the POLO calculation methodology would be disruptive with the risk of potential further disputes. The alternative proposals each have their own disadvantages which are not insignificant. There would appear little merit in changing a tried and tested method when few CPs have registered concern with the application of the blended rate element in calculating the 3rd August 2006 OCCN or its continued application in future calculations of NTS outpayments.

The ongoing application of the Call Origination condition AA11 to NTS outpayments, which requires an automatic link between BT Retail prices and NTS POLOs, continues to be the primary cause of NTS disputes. CPs are able to reject or delay BT Retail driven changes to NTS POLOs with the consequential requirement for dispute resolution by the regulator.

Ofcom has already directed the removal of condition AA11 to 0870 traffic from the beginning of 2008. It is anticipated that this will remove many if not all of the drivers for 0870 OCCN based disputes. BT would welcome a similar review of the regulation applying to other NTS number ranges, especially 0845, as previously proposed by Ofcom.

To avoid the possibility of further disputes in this instance, BT would urge Ofcom to determine that the rates applicable to NTS outpayments, as per the 3rd August 06 OCCN, should be placed within the BT Carrier Price List with an applicable date of 1st October 2006.

Annex 2

C&W Response to Draft Determination

Cable&Wireless response to Ofcom's Draft Determination to resolve a dispute between BT and various communications providers about NTS outpayments.

Introduction

Thank you for the opportunity to respond to the Draft Determination in respect of this dispute. Cable&Wireless welcomes Ofcom's clear assessment of the various methodologies and we fully endorse Ofcom's aim of seeking an equitable coupling of outpayments with revenues.

Cable&Wireless was unable to come to a commercial agreement with BT with regard to the August OCCN changes due to a lack of transparency in the calculations used by BT. Cable&Wireless was unable to determine the impact that the removal of the long / short distinction had upon its specific call profile and therefore could not agree to terms that could be unfairly detrimental to Cable&Wireless. Even after Ofcom's detailed examination of the long / short methodology set out in Option 2, we remain unable to accurately evaluate the precise impact this would have on Cable&Wireless.

Whilst welcoming Ofcom's assertion that they will examine BT's compliance in relation to charge controls, we are somewhat disappointed that at this stage Ofcom has chosen to only 'encourage' BT to be more transparent in disclosing methodologies and data.

Methodology

Cable&Wireless endorses Ofcom's view that Option 3 represents the most fair and reasonable approach to matching outpayments with revenues. In order to avoid future disputes a direct link that is transparent to all operators and which allows BT to fully meet its regulatory obligations to provide services on fair terms is required. We believe Option 3 achieves this and is the best option in terms of Ofcom objectives.

Option 1 is based on an opaque blended rate, the components of which only BT has visibility. Cable&Wireless' primary concern throughout this process has always been to understand the link between the methodology employed by BT and the increasing level of discounts. We do not dispute Ofcom's assertion that BT's methodology may be a reasonable solution, however to provide a truly level playing field terminating operators must be able to have confidence that the NTS formula has been fairly applied and that justifiable costs have been retained by the originating operator. The increasing use of blended rates results in a

methodology that is opaque to anyone other than BT or Ofcom once a dispute has been submitted. As a result any change to rates naturally attracts disputes as operators are genuinely unable to determine whether such changes may be discriminatory. A methodology that is simple to implement is of little benefit if it is so opaque that every change requires an inefficient resolution through disputes to Ofcom. Efficiency gains from implementation will soon be negated by the resource required in both Ofcom and industry to resolve disputes.

Option 2 sets out proposals for maintaining the short/long distinction for call outpayments. This has been the focus of much of the communication between Cable&Wireless and BT. To be clear, we did not propose this methodology as a solution, however we have been keen to understand the impact of the call set-up fee on new short duration rates that would surely be derived as the revenues changed. We thought it unreasonable for BT to expect Cable&Wireless to accept such a change in pricing methodology without being able to model the impact upon our business. In this case the effect has been masked by the other changes introduced by BT under Option 1 and by the blending on the short duration rate that was used to account for the minimum call fee. BT's insistence that these rates should be confidential, despite the fact that alone they have no significance for anyone, other than to allow an operator to calculate its own impact on revenue is the crux of this dispute. Cable&Wireless remain frustrated by this lack of clarity however it is our view that Option 3 addresses this issue.

Option 3 is Cable&Wireless' preferred methodology. The option provides operators with the optimal outcome between revenues and outpayments. Irrespective of the current gains or losses individual operators may face as a result of this dispute, in the long term it represents the most fair and reasonable solution. Any move that clearly links revenue to outpayment is fully supported.

Discount Rates

Cable&Wireless welcome Ofcom's finding that the correct level of discount has been applied by BT. We regret the fact that we were obliged to seek resolution of this aspect of the dispute via Ofcom, but it has been an inevitable consequence of the lack of transparency that BT has applied to such adjustments. We welcome Ofcom taking this opportunity to promote a solution that will allow a more efficient use of Ofcom's resources and provide operators with the transparency they require to be confident that BT's adjustments have been conducted in a fair and reasonable manner. We reiterate our view that the best way to do this is via Option 3.

Call Set-up Payment

It is Cable&Wireless' understanding that as the call set-up payment occurs before the start of the call it would be inappropriate for BT to seek to recover costs from the 2.5ppm outpayment. We acknowledge that once the call duration had actually commenced, then it would be appropriate for BT to recover costs from the ppm call duration. We would ask Ofcom to confirm that this is indeed the case.

We would also ask whether the move to Option 3 and call set-up charges change the RDF and if so what the impact of this will be.

Whilst outside the scope of this particular dispute, the principle set out by Ofcom in relation to the call set-up fee payment on the 0845 range would seem to have application to other NTS ranges. This is particularly the case where blended rates are not currently applied to the range by BT. Certain 0844 and the 09 ranges would appear to require a call set-up fee payment in the same manner as 0845. We welcome Ofcom's views on the application of the preferred methodology of Option 3 to these ranges.

Billing implications

Ofcom's proposal for Option 3 emphasizes that it represents a fair and reasonable solution as long as the cost of implementation is proportionate. It is Cable&Wireless' opinion that the cost of implementing Option 3 is entirely proportionate. Cable&Wireless is able to implement the necessary changes to our billing systems with a minimal level of cost and disruption.

It is our opinion that the precedent has already been set for the type of two-part billing set out in Option 3 in the Directory Enquiry arena. Directory Enquiry services are already billed through a connection charge and subsequent ppm rate. We do not believe that applying this to the NTS arena poses any unique issues for an efficient operator.

We believe that Ofcom has a duty to consider the cost of implementation as applicable to those of an efficient operator. It is our opinion that industry as a whole should not be asked to fund any changes to BT's billing systems or claims for cost recovery. The precedent for this type of billing has already been set and we believe that a truly efficient operator should be able to implement the necessary changes with little additional cost and within a reasonable timeframe.

Yours faithfully

Justin-Mark Hornby

Annex 3

Colloquium response to Draft Determination

"Colloquium supports the approach that there should be a close correlation between NTS retail call revenues and outpayments in the interest of fairness and to provide a level playing field for all providers, be they originators or terminators. We believe the BT proposed OCCN does not reflect a fair approach in that the value of the MCC and CSF is not reflected in outpayments. Colloquium agrees that option 3 in the draft determination (sic) offers the fairest solution to this problem.

Colloquium would also like to point to possible difficulties later. BTR only recent introduced a difference in call charges between residential and business customers. The previous NTS outpayments have been founded on a common pricing approach. Colloquium expects further divergence of call charges in the future and the blending process is likely to become increasing problematic and unfair, particularly for niche players. Colloquium appreciates the difficulty of identifying whether a call originates from a residential or business line, despite this obviously being known to BTR. If NTS outpayments are to fairly reflect revenue and costs in the future some solution will be needed found to this problem."

Annex 4

List of Providers in dispute with BT

Eight Providers have refused or failed to sign the OCCN

A4.1 The following operators have refused or failed to sign the 3 August 2006 OCCN:

- Cable & Wireless UK (“C&W”);
- Colloquium UK (“Colloquium”);
- Interweb Design
- Verizon UK
- Nexus Telecomms
- Opal Telecommunications¹⁸
- Prodigy Internet
- Tiscali UK.

¹⁸ Totem Communications has also failed to sign the OCCN but, since it is owned by Opal Telecommunications, is treated as being synonymous with Opal.