

Discontinuation of charge control for non conveyance elements of a Public Emergency Call Service

A statement published by Ofcom

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Explanation

The consultation

1. On 8 April 2004, the Office of Communications (“Ofcom”) published a consultation [“Proposal to discontinue charge control for non conveyance elements of a Public Emergency Call Service”](#) (the “April Consultation”). The consultation period ended on 6 May 2004.
2. One non-confidential response was received during the consultation period, and one confidential submission was received after the consultation period had closed. Having considered those responses, Ofcom has decided to implement the proposal contained in the April Consultation.

The Public Emergency Call Service

3. This statement concerns the discontinuation of the control on British Telecommunications plc (“BT”)’s wholesale charges for handling calls to 999 and 112.
4. The service known as the Public Emergency Call Service (“PECS”) is provided to other providers of electronic communications services. All providers of publicly available telephone services are obliged to offer their retail customers access to the emergency services at no charge, and most rely on BT’s PECS to answer and deliver these calls. The PECS includes call answering by trained operators (the “non conveyance element”), conveyance of the call from a point of interconnection with the originating operator to the call answering centre and onward conveyance of the call to the appropriate emergency authority (the “conveyance elements”). Although retail calls to 999 and 112 are free of charge, providers of communications services must pay for the underlying wholesale service.

Continuation of licence conditions and Condition 69.23

5. Although individual licences granted under section 7 of the Telecommunications Act 1984 have now been replaced in part by General Conditions made under the Communications Act 2003 (the “Act”), there were a number of specific conditions included in some individual licences which cannot be replaced by new conditions under the powers contained in the Act until the relevant market reviews have been completed and implemented. Paragraph 9 of Schedule 18 to the Act allows Ofcom to issue notices to continue provisions formerly contained in licence conditions until such time as it has reviewed the relevant market (these powers were previously exercised by the Director-General of Telecommunications (the “Director”) until Ofcom assumed its powers on 29 December 2003). BT’s Condition 69.23 (“continued provision Condition 69.23”) was made to continue in force by such a continuation notice (the “Continuation Notice”) issued to BT by the Director on 23 July 2003.

6. Continued provision Condition 69.23 requires BT to ensure that each discrete charge for the non-conveyance element of a PECS does not increase by more than RPI, as specified in BT's Condition 69.22(e) ("continued provision Condition 69.22(e)") unless Ofcom agrees otherwise on grounds that the quality and security of the service would be endangered.

Market Reviews

7. The European Commission ("the Commission") has adopted a Recommendation on Relevant Products and Services Markets (the "Recommendation") which lists a set of markets in which ex ante regulation may be warranted. However, National Regulatory Authorities ("NRAs") are able to regulate markets that differ from those identified in the Recommendation where this is justified by national circumstances. The Director is obliged to take the utmost account of this Recommendation when defining markets appropriate to national circumstances. In some instances the Director has exercised his discretion to define markets other than those included in the Recommendation, and he has notified these draft decisions to the Commission and other NRAs. The service referred to in paragraph 4 is not included in the markets listed in the Recommendation or the markets which the Director or Ofcom has so far exercised its discretion to define as markets appropriate to national circumstances.

Removal of continued regulatory obligations

8. Paragraph 9(11) of Schedule 18 to the Act requires Ofcom as soon as reasonably practicable after giving a continuation notice, to take all steps necessary to enable it to decide whether or not to set a condition for the purpose of replacing the continued provision. It further requires that Ofcom must then decide as soon as reasonably practicable whether or not to exercise its power to set a Condition within the categories set out in the Act. Paragraph 9(12) of Schedule 18 to the Act then requires that Ofcom must give a discontinuation notice with respect to the continuation notice as soon as reasonably practicable after making the decision required by paragraph 9(11). Ofcom considers therefore that while it is appropriate to keep such notices in place pending completion of planned market reviews, Ofcom does not believe it is appropriate to maintain continuation notices for services in a market which Ofcom has no plans to review.

BT's non binding undertaking

9. BT has made a non-binding commitment to Ofcom that it will not increase its charges for the non conveyance element of the PECS by more than RPI, as specified in continued provision Condition 69.22(e) during the period to 30 September 2005, unless Ofcom agrees that the quality and security of the service would otherwise be endangered.

Responses to the consultation exercise

10. One non-confidential response to the April Consultation was received, from Orange. That response repeated Ofcom's observations, contained in the April Consultation, about the state of competition to provide a PECS and characterised as "surprising" Ofcom's proposal to discontinue continued provision Condition 69.23,

given Ofcom's position on the application of price controls to the mobile termination market. Orange did not, however, make any substantive proposals for future regulation of PECSs nor did Orange express any views about the appropriateness of Ofcom's proposals in respect of PECSs. The focus of the response appeared to be directed at Ofcom's proposals in respect of mobile call termination, which were the subject of consultation earlier this year.

Ofcom's decision

11. The conveyance element of the PECS falls within wholesale interconnection markets which Ofcom has reviewed and in which SMP conditions have been imposed. However, Ofcom considers that it would be disproportionate to impose further ex ante regulation to control BT's ability to increase its wholesale charges for the non-conveyance element of this service. Ofcom believes that the public profile of the retail 999 service and the public perception that it is provided as an essential social service rather than as a commercial venture, provide material reassurance that BT is unlikely to exploit its position unfairly by charging excessive wholesale prices.

12. Given the general view of the emergency services that a proliferation of competing wholesale providers might endanger the quality and security of the retail 999 service, Ofcom also believes that it would not be appropriate to impose ex ante regulation with a view to stimulating competition in the provision of parallel wholesale PECSs. Ofcom does recognise, however, that a highly resilient national service could, no doubt, be provided by organisation(s) other than BT if the emergency services and/or other providers of public electronic communications services were to decide that continued reliance on the former incumbent was no longer desirable. If the absence of formal price controls leads to a situation where BT does exploit its position to anti-competitive effect, Ofcom will, amongst other things, consider using its statutory powers under the Competition Act 1998, the Enterprise Act 2002 or the Communications Act 2003 where appropriate. Ofcom, in association with the emergency services and other providers of publicly available telephone services, may also consider the possibility that an alternative provider of a national PECS should be selected, by commercial means or otherwise.

13. Having considered the responses to the consultation exercise, Ofcom has decided to implement the proposal contained in the April Consultation and is discontinuing continued provision Condition 69.23. The reasons for this decision are as set out in this Statement and the April Consultation. A notice is attached at Annex 1 to this statement notifying BT that continued provision Condition 69.23 will no longer apply. As the discontinuation notice is served by post, it will be deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Act.

Annex 1

Notice to British Telecommunications plc under paragraph 9 of schedule 18 to the Communications Act 2003

Notice that certain continued provisions set out in the continuation notice given to British Telecommunications plc on 23 July 2003 will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003

1. The Office of Communications (“Ofcom”), in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 (‘the Act’) hereby gives notice to British Telecommunications plc (‘BT’) that Condition 69.23 contained in Schedule 1 to the continuation notice given to BT on 23 July 2003, which took effect from 25 July 2003, (‘the Continuation Notice’), will cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003 (the ‘Discontinued Provision’).
2. In giving this notice, Ofcom has, in accordance with Paragraph 9 (11) of Schedule 18 to the Act, taken all steps necessary for enabling it to decide whether or not to set a condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Discontinued Provision and whether or not to exercise its power to set a condition under that Chapter for that purpose.
3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from the date this notice is deemed to be effected in accordance with section 7 of the Interpretation Act 1978 and section 394(7) of the Communications Act 2003 to the extent that they were given or made for the purposes of the Discontinued Provision.
4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to BT in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.
5. Ofcom issued a consultation as to its proposals to discontinue the Discontinued Provision on 8th April 2004 and requested comments by 6 May 2004. Ofcom has taken into account the comments it received during that consultation.
6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this notice, headings and titles shall be disregarded.

Signed
Philip Rutnam
Date 27 May 2004

A person authorised under paragraph 18 of the Schedule to the Office of
Communications Act 2002