



Mobile Broadband Group
PO Box 34586, London SE15 5YA

20th December 2005

Mr Gavin Daykin
Strategy & Market Development
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Dear Gavin,

Conditions regulating Premium Rate Services

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 "Conditions regulating Premium Rate Services".

Our response addresses only the proposed changes to the definition of Mobile Services. In outline, we do not support making any changes to the Mobile Services definition at this time. While Ofcom may argue that this is intended only as a clarification, we believe that the text suggested does not make the situation any clearer. Furthermore, we believe that it would be more appropriate to hold off any changes until Ofcom conducts its review of the scope of PRS regulation in 2006. We do not see the benefit of making piecemeal alterations. Because of forthcoming developments in the mobile market, the MBG will want to have much more detailed discussions with Ofcom and ICSTIS than this short consultation period will allow.

Short consultation not justifiable

Even though Ofcom is only suggesting a small textual change, the regulation of mobile premium rate services is too important to justify the omission of pre-consultation and the guillotining of consultation periods.

We also do not agree that the supposed ambiguity is a cause of consumer harm. ICSTIS does have to deal with problems with Premium SMS supplied through 3rd parties but all the mobile operators are already working with ICSTIS to pursue service providers that are in breach of the ICSTIS Code. In addition, through contractual means, the mobile operators have implemented measures beyond the ICSTIS Code, where they feel that additional protection is required.

Ambiguity over the effect of the proposed change

With respect to the proposed text (i.e the exclusion of calls to a Mobile Service), we do not believe that this provides the clarification you seek.

The relevant definition of a 'Mobile Service' is a service consisting in the conveyance of signals by means of an electronic communications network, where every signal that is conveyed thereby, has been or is to be conveyed through the agency of Wireless Telegraphy to or from Apparatus designed or adapted to be capable of being used while in motion.

Virtually every Premium Rate Service in the mobile sector involves and consists of the conveyance of signals to (and from) an Apparatus through the agency of Wireless Telegraphy. The word 'calls' is also used in different ways in different contexts. Sometimes it just refers to voice calls and sometimes to voice and data. We therefore do not see that the situation is made any clearer by the change that Ofcom proposes.

If Ofcom believes the existing situation lacks clarity, then, we submit, this will persist and potentially just cause more confusion. A far better approach would be to hold off making any changes until the mobile industry, ICSTIS and Ofcom have agreed a new regulatory settlement that is proportionate and reflects the significant changes that we anticipate in the next few years. We would be happy to commence discussing this as early as is practical in 2006.

Future developments

One of the major upcoming developments is the advent of a 'direct to bill' charging mechanism for content. In the mobile industry in the UK it is generically known as X-Pay.

X-Pay will provide a mechanism for payment transactions with third parties to be billed directly to a customer's account as an identifiable transaction, rather than as a charge for a voice call or SMS. The separation of the charge from the delivery of a service removes X-Pay from the definition of a Premium Rate Service according to Section 120 (7) d of the Communications Act 2003. Section 120 (7) and (8) define a PRS as where a charge is imposed for the use of an electronic communications service. This point was clarified by ICSTIS and the mobile operators in a joint letter to Stephen Timms MP, during the passage of the Communications Act.

The essential feature of X-Pay is that payment is independent of the transport mechanism for the service that is being paid for and that the merchant controls the customer experience through the various screens that are used to set up and authenticate the transaction. X-Pay is therefore quite distinct from traditional PRS.

The MBG is currently undertaking an assessment of the applicable regulation and what measures will be required to ensure that customers are properly protected. In the coming months, we will want to consult in detail with Ofcom, ICSTIS and other relevant parties about such matters.

While Ofcom may be tempted to attempt a 'quick fix' for what they perceive as a problem, we feel that this proposal will only cause confusion in the future. It is just too risky to push this change through without pre-consultation or on a 'short' consultation

period. The future of Premium Rate and mobile content in general is just too important.

Yours sincerely,

Hamish MacLeod

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