



Geoff Brighton
4th Floor
Competition Group
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Dear Geoff,

Re: Changes to 0870

This response is one of a series made by FleXtel with respect to 0870 over the last few years. Please see: <http://www.flextel.co.uk/ofcom> for a full list of FleXtel responses and details of its position on this issue.

It seems that Ofcom has yet to fully appreciate that when it is in a hole, that it should stop digging. Since the original consultation in 2004¹ and its policy U-turn in 2005² Ofcom has become increasingly confused and has continued to defend its fatally flawed approach, with respect to 0870, regardless of extensive stakeholder input and changes both in its knowledgebase and in the market.

It is clear that the current consultation is far too narrowly drawn and fails to take account of the wider issue of price transparency. These proposals do not effectively protect consumers, since the proposed changes will effectively enable OCPs to charge for calls as they wish, whilst at the same time, fruitlessly fetter TCPs, which are likely to be subjected to arbitrary termination rates, to the detriment of fair competition and of innovative services.

Furthermore it is now obvious that Ofcom's original 2005 Policy Objectives have not been delivered:

- *Price transparency – consumers should know what they are paying for calls; **Fail***
- *Range and choice of services – consumers should have access to a wide range of services and a choice of suppliers; **Fail***
- *Consumer protection – the use of 08 numbers as a micro-payment system should be accompanied by measures which provide an adequate level of consumer protection, particularly for vulnerable consumers; **Fail***
- *Promotion of competition – regulation should promote competition between CPs and SPs, consistent with reasonable levels of cost recovery and revenue certainty. **Fail***
- *Reduced regulatory intervention – Ofcom should operate with a bias against regulatory intervention and should avoid imposing any unnecessary burden on consumers, suppliers or other stakeholders. **Fail***

¹ Options for the future: <http://www.ofcom.org.uk/consult/condocs/ntsoptions/>

² NTS: The way forward: http://www.ofcom.org.uk/consult/condocs/nts_forward/

Table 1: List of events and data impacting the 0870 intervention

Date	Item	Impact
2005	Warnings by BT and UKCTA on pre-call announcements and the impact on fax & data calls. ³ Law requires Ofcom to perform a H&S Risk Assessment.	Ofcom analysis should have highlighted future health and safety risks, especially if Ofcom had performed a proper H&S Risk Assessment for 0870 and 070.
2006	03 Service proposed. ⁴	Support from industry, but Ofcom studiously ignores calls to review cost/benefit of 0870 in light of 03.
2007	03 Services launched.	Reduces benefit of the 0870 intervention, but Ofcom ignores this.
2007	070 Pre-call announcements cause H&S issues, that are life threatening.	Ofcom stop announcements on 070. Ofcom may be investigated by HSE. Ofcom delays 0870 intervention.
2007	0870 dispute leads Ofcom to invent a ludicrous GFT proposal to fudge the commercial agreement ⁵ .	0870 termination rates now dependent not only on BT retail rate, but also BT line rental. TCPs do not gain promised revenue certainty.
2008	CAT confirms that ⁶ : <i>“the use of the gains from trade test was a serious error by OFCOM and did not form a proper basis for a decision as to the reasonableness of the rates” and “OFCOM is a regulator bound by its statutory duties and the Community requirements it also means reasonable for the purposes of ensuring that those objectives and requirements are achieved. OFCOM did not approach resolving these disputes on this basis and it therefore committed an error of law”</i>	Ofcom must revisit the 0870 determination ⁷ . Regulatory uncertainty abounds. 0870 providers unsure what to tell customers or how to move forward. Industry suffers cost overhead due to Ofcom’s tactical regulation.
2008	Ofcom removes requirement for 0870 pre-call announcements ⁸ .	Consumer call-price protection benefits lost. However, life critical data calls not put at risk.
2008	Consumer Protection from Unfair Trading regulations became law.	OCP’s and Ofcom should re-consider their position on pricing transparency.

In the light of this and the other significant changes noted in Table 1, we do not believe that Ofcom should proceed with the current intervention. Instead it should carry out a wide-ranging consultation aimed at addressing the issue in a proper and comprehensive manner.

Our responses to the specific consultation questions are below:

Question 1: Do you have any comments on the pricing transparency options considered and Ofcom’s proposal to implement Option B?

It is clear that this will only make matters worse, leading to even more price opacity and hence consumer confusion.

³ PCA Risk Warnings: <http://www.ofcom.org.uk/consult/condocs/ntsoptions/Responses/> see: BT & UKCTA

⁴ 03 Proposed: <http://www.ofcom.org.uk/consult/condocs/numberingreview/>

⁵ 0870 call termination rate determination: http://www.ofcom.org.uk/consult/condocs/0870_dispute/summary/

⁶ CAT Judgement: <http://www.catribunal.org.uk/archive/casedet.asp?id=138>

⁷ Implications CAT judgment: http://www.ofcom.org.uk/bulletins/comp_bull_index/other/disputeref/

⁸ Pricing announcements not required: <http://www.ofcom.org.uk/consult/condocs/0870calls/summary/>

Question 2: Do you have any comments on the draft notification in Annex 3 to make a change to the SMP Condition?

We believe that removing 0870 numbers from the NTS condition is not appropriate and will lead to commercial disputes and favour BT. We cannot see how this would benefit consumers or competition.

Question 3: Do you have any comments on the draft notification in Annex 4 of a proposed amendment to General Condition 17 to make the proposed designation for 0870 calls applicable to all OCPs?

This is unnecessary, if our response in question 2 above is adopted.

Question 4: Do you have any comments on the draft notification in Annex 5 of a proposed amendment to the National Telephone Numbering Plan introducing the revised designation for 0870 calls?

See response to question 3.

Question 5: Do you have any comments on the draft notification in Annex 6 of a proposed amendment to numbering application form S8 to align it with the revised designation for 0870 calls in the National Telephone Numbering Plan?

See response to question 3.

Question 6: Do you have any comments on the draft notification in Annex 7 of a proposed amendment to General Condition 14?

See response to question 3.

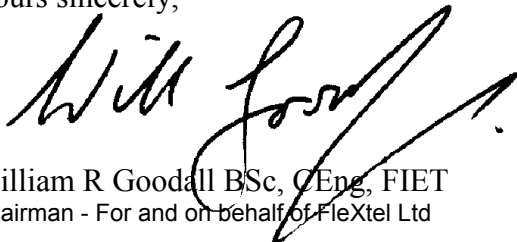
Question 7: Do you have any further comments

See our introductory comments above.

We hope you find our input constructive and we look forward to continuing the debate on Ofcom's novel approach to cost-benefit impact assessment, i.e. where the benefits are examined and promoted by Ofcom, but the costs and unintended consequences are left to industry to sort out.

One must ask the question is this methodology acceptable or is it now time for a detailed external review of Ofcom's performance in this matter? Certainly the CAT has reservations and its recent judgement, in our opinion, puts the regulation of the industry back onto solid rails.

Yours sincerely,



William R Goodall BSc, CEng, FIET
Chairman - For and on behalf of FlexTel Ltd