



3rd June, 2009

Mr Ed Richards
Chief Executive Officer
Ofcom
Riverside House
2a Southwark Bridge Road
London
SE1 9HA

Dear Mr Richards,

Re: 0870 Changes

It is now less than two months before Ofcom's planned implementation date for 0870, the 1st August, 2009. Yet, FleXtel and other 0870 wholesale suppliers still await a firm decision, with respect to the reduced wholesale payment rates. By prevaricating, Ofcom is now creating unacceptable regulatory uncertainty.

Since 2005, it has been clear that, to make its big idea work, Ofcom would need to impose "below cost" wholesale payment rates on 0870 suppliers. Without this draconian intervention, it would be impossible for BT (and other 0870 retailers) to price 0870 at same rate as ordinary Geographic (01 and 02) calls. It follows that, for 0870 service to continue, 0870 wholesalers will now be forced to bill an 0870 number user, to receive each call i.e. a retail billing and collection systems is required to be established.

FleXtel and a number of other 0870 wholesalers have evolved their specialist business models by targeting the highly efficient bulk billing and collection processes of the wholesale bulk payment processes, established between BT and industry in 1985.

By billing calls in bulk, this natural micropayments system enables service delivery to very low call volume users e.g. small businesses such as SoHo, SMEs and sole traders. It also accommodates specialist micro-volume use, typically about one call per year e.g. for emergency alarm systems and automatic monitoring systems. The low cost, stability and reliability of the non-premium rate 0870 number, are the key drivers here. Typically, the joint cost to the caller and user is much less than 50 pence per year.

Based on over 25 years experience in this industry, FleXtel management considers that retail billing for such low call volumes to be commercially unsustainable. Therefore, Ofcom has presented FleXtel with no option but to close its 0870 service on the 1st August, 2009. We have therefore had to advise our customers accordingly, since we now no longer expect Ofcom to recant. Ofcom continues to ignore strong evidence that its concept is flawed and also strongly favours BT, to the detriment of its competitors. It also does nothing for the mobile phone consumer, since the evidence suggests that 0870 call prices will not fall, instead mobile retailers, like Vodafone, will simply enjoy increased profit margin.

To be clear FleXtel is not in any financial difficulty and has no debt. Indeed, for its size, FleXtel holds very significant cash and property reserves spread across a number of banks; an enviable position that BT and other public companies might desire. However, FleXtel is not a charity and has no choice but to close its 0870 service, to avoid a good profit stream becoming seriously loss making.

Despite FlexTel and others using best efforts to explain to Ofcom that its 0870 intervention is mistargeted (“mobile 0870 overcharging”), unnecessary (“introduction of 03”) and not evidence based, Ofcom insisted on ploughing on, presumably to suite its political ideology.

Ofcom’s latest 0870 Statement, made only this April, is now based on the ridiculous hope that there is a “good chance” chance that mobile retailers will lower their 0870 prices once the 0870 wholesale rates have been forced below cost. This hope is wholly ridiculous because there is overwhelming evidence of retail price inelasticity to wholesale rate variation. For example, mobile originated 0800 calls cost much more than Geographic calls, despite having a zero (or less) wholesale rate. This mobile over-charging has existed for over twenty years, without any effective regulatory intervention. Why then should the lowering of 0870 wholesale rates to a point above 0800 rates make the retail price of an 0870 call drop below that of an 0800 call? What utter nonsense!

Since mobile calls have for some time made up the bulk of UK call volume, such evidence should be give adequate weight. This evidence shows up Ofcom’s intervention as wholly ineffective and since vulnerable citizens commonly use pre-paid mobiles, it does nothing for the UK community. Ofcom is now exposed as having made a gross error of judgement.

However, although this is all “water under the bridge” you will see why I cannot subscribe to your view that Ofcom is an evidence based organisation. In this area at least, the evidence is that it is not!

To move forward, my questions to you are :

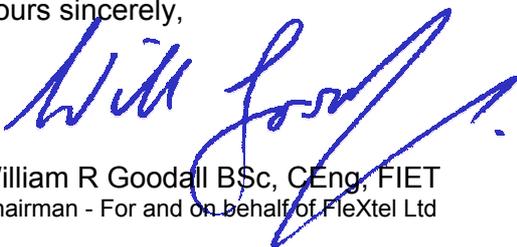
- **Is Ofcom acting illegally, by imposing below cost contractual terms on wholesale suppliers of 0870 service?**
- **Would the EU or the OFT consider this to be the imposition of an unfair contract term?**

If the answer to the above questions is no, then could Ofcom please hurry-up and advise me and the rest of the industry of the new 0870 wholesale rates. Alternatively, perhaps Ofcom could consider postponing the latest 0870 Statement implementation deadline to a more reasonable date.

This 0870 debacle has certainly damaged Ofcom’s reputation in the eyes of not only the industry but also of the Consumer, who is now protected merely by a “good chance”. Such an approach is just political spin, with the Consumer protection test being merely a set of Emperor’s new clothes.

The whole issue is therefore bringing Ofcom’s standing into serious disrepute and perhaps merits a Parliamentary inquiry by the Treasury Select Committee, an inquiry at which I would happy to provide verbal and written evidence.

Yours sincerely,



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

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