



31st January 2008

**BT'S RESPONSE TO OFCOM'S
CONSULTATION:
"Revised statement of policy on the persistent
misuse of an electronic communications
network or service."**

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Introduction

BT welcomes the opportunity to comment on Ofcom's proposals for revising the statement of policy on the persistent misuse of an electronic communications network or service.

We are concerned that whatever changes are finalised in a reviewed statement, the real perpetrators of persistent misuse will continue unheeded, ignoring even the most basic requirements such as adherence to TPS, CLI, recorded message etc. We are aware, for example, of a return of the misuse of fax broadcasting and wide abuse of the calling line identification facility. These incidents are not necessarily reflected in the monthly silent call figures from our Nuisance Call Bureau that we provide to Ofcom. We appreciate that it is because these companies ignore such basic requirements that consumers who suffer from their actions are unable to complain, and therefore these companies have no action taken against them. However, we consider that there is a real consumer detriment issue that is being overlooked.

Q1 Do you agree that the proposed changes make for a clearer set of rules that enable compliance to be achieved with a greater degree of certainty?

1. We have commented on each recommendation in turn.

Revised recommendation: *the 'abandoned call' rate shall be no more than three per cent of 'live calls', calculated per campaign (i.e. across call centres) or per call centre (i.e. across campaigns) over any 24 hour period, and shall include a reasoned estimate of AMD false positives.*

2. BT considers that the existing three per cent target is appropriate and proportionate and that any reduction at this time would not necessarily lead to much actual public benefit.
3. It is known that some makes of diallers using Answering Machine Detect (AMD) will, on some calls, misinterpret the presence of a live individual as an answering machine and terminate the call – a 'false positive'. BT is concerned at the proposal that diallers using AMD should factor in these false positives into their abandoned call rates.
4. We understand what Ofcom are trying to achieve with the proposal. However, we are concerned that this will make fair and equal monitoring across the industry problematic. It would be invaluable to know the source of Ofcom's data regarding AMD and the assumptions relating to the levels of false positives. We believe that this proposal will lead to AMD not being used, and wonder whether this proposal is proportionate to the actual harm suffered by consumers.

Revised recommendation; *in the event of an 'abandoned call', a very brief recorded information message is played within two seconds of an individual beginning to speak, which contains at least the following information:*

- *the identity of the company on whose behalf the call was made (which will not necessarily be the same company that is making the call);*
- *details of a no charge (0800) or Special Services basic rate (0845) number the called person can contact so they have the possibility of declining to receive further marketing calls from that company;*
- *includes no marketing content and is not used as an opportunity to market to the called person.*

5. BT has no comment on this revision.

Existing recommendation: *calls which are not answered must ring for a minimum of 15 seconds before being terminated;*

6. BT has no comment on retaining this existing recommendation.

Revised recommendation: *when an 'abandoned call' has been made to a particular number, any repeat calls to that number in the following 72 hours may only be made with the guaranteed presence of a live operator.*

7. BT has no comment on this revision.

Revised recommendation: *for each outbound call a CLI number is presented to which a return call may be made which is either a geographic number or a non-geographic number adopted as a Presentation Number which satisfies the Ofcom Guide to the use of Presentation Numbers.*

8. BT is concerned at Ofcom's assertion that "it is technically feasible for overseas call centres to present a non-geographic CLI number." It is our understanding that the ability to present a UK non-geographic CLI for call centres outside the UK is dependant not just upon the dialler equipment, but importantly, the functionality of the country's network to which the call centre is connected and the ability of the terminating network to deliver CLI for such International calls.

9. BT knows of one EU country where the national regulating authority for communications forbids origination of any calls with CLI data that is not compliant to that originating country's numbering scheme.

10. In such circumstances we would anticipate that Ofcom considers these as mitigating factors in any investigation.

Existing recommendation: *any call made by the called person to the contact number provided shall not be used as an opportunity to market to that person, without that person's consent. No changes are proposed.*

11. BT has no comment on retaining this existing recommendation.

Existing recommendation: *records are kept for a minimum of period of six months that demonstrates compliance with the above procedures.*

12. BT has no comment on retaining this existing recommendation.

13. BT notes Ofcom's proposal to establish as 'rules' those factors that carry most weight in terms of compliance, thus reflecting their priority, with the other recommendations acting primarily as mitigating factors in establishing the seriousness of a particular act of misuse and the level of any potential penalty. Since publication of this Statement in 2006, BT has been concerned that terms such as 'recommendations', 'mitigating factors' and now 'rules' and 'requirements' do not necessarily lend themselves to the clarity needed for compliance by the industry. We ask that Ofcom consider further the impact of using such ambiguous terminology in regulation.

Other proposed amendments: Automated messages and outbound call steering

Q2. Do you agree with Ofcom's approach to determining whether the use of automated messages constitutes misuse?

Q3. Do you believe that it is possible to define objective criteria for applying the public interest test?

Q4. Do you believe that outbound call steering should only be used with customers who have given their prior consent?

14. BT has very serious concerns with Ofcom's approach to the use of automated messages. Ofcom has noted that under the Privacy and Electronic Communications (EC Directive)

Regulations 2003, all automated messages without live speech that include marketing content are prohibited. Clearly such marketing calls are the real menace here, and yet neither Ofcom nor the ICO appears to have taken any effective action against consistent perpetrators made known to them by affected customers and other complainants such as BT. Our customers continue to suffer from this illegal practice, and yet here Ofcom is proposing to outlaw legitimate automated messages made by bona fide companies such as BT which have been proven to be beneficial to customers. This is completely disproportionate.

15. We note Ofcom's assertion that the effect of 'outbound call steering' is likely to cause at least some people to suffer unnecessary annoyance and inconvenience. This could be said to be true of all outbound calling, whether using live operators or automated recorded messages. In which case this test, if applied according to Ofcom, would mean that all outbound calling is a form of misuse, which is clearly nonsense. The application of this test in a 'technology-specific' manner is not good regulation.
16. Whilst outbound call steering and other automated recorded messages are a relatively new technology, their use has been widely adopted by numerous organisations in many industries. As a law-abiding company BT does not, of course, use this technology for marketing purposes and, as stated above, we believe this type of persistent misuse is where Ofcom and the ICO should be focusing their attention. However, we utilise the technology for many interactions with our customers: welcome to service, or upgrade; payment reminders; confirmation of payment, reconnection, fault resolution, appointment dates, complaint receipt and resolution. Whilst it is technically true that calls made by this technology could just as easily be made from a conventional call centre using live operators and dialler technology, the hard economic facts are that these calls would simply not be made. Customers would therefore remain ignorant of key events affecting their account. Postal mail is too slow for time-critical activities such as confirmation of service resumed or confirmation of payment.
17. The economics of this technology are such that we can contact many more customers in a short space of time compared to agent calling. This allows for timely communication with the customer to empower them in their use of the service, and is therefore to their benefit.
18. Informing customers of their payment status through automated recorded messages helps them to keep up to date and not build up an unsustainable debt. It allows our customers to pay their bill through our automated card payment service, thus removing concerns about non-payment. This helps customers protect their credit status with BT and their overall credit rating, which might otherwise affect their ability to get credit elsewhere.
19. Although relatively new, BT's experience is that customers express a high level of satisfaction with this technology. We have tracked our customers' feedback on automated recorded messages since implementation. For bill reminder, for example, our monitoring reports that only approximately 0.02% of successful contacts using this technology raise a query or complaint. Of these few customers, 90% are contacting us not to discuss the technology used, but to discuss other matters. We consider this evidence that consumers' familiarity with this technology is increasing.
20. Furthermore, Ofcom's assertion that the use of any type of automated message in a credit or debt context runs the risk of jeopardising the debtor's privacy is flawed. The manner in which BT uses the service means that no sensitive, personal data is conveyed. BT has considered the matter of our customers' data privacy most carefully and requests validation by the answering party.
21. Clearly it is not practical for Ofcom to provide guidance on a case-by-case basis for each application. BT believes that it should be possible to create a simple and coherent regulatory framework within which restricted applications of this technology are deemed to be acceptable. A statement that it should be limited to contacts with existing

customers, for non-marketing purposes, with no breach of data privacy, is perfectly satisfactory and would ensure that such calls continue to be in the public interest.

22. BT considers that additional consent is not appropriate or proportionate for this type of call.

Q5. *Do you agree with Ofcom's clarification that the exploitation of all types of revenue-sharing numbers represents a form of misuse?*

23. BT agrees that the exploitation of all types of revenue-sharing numbers represents a form of misuse.

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