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Cable&Wireless

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Dear Frank,

1. INTRODUCTION

Cable&Wireless welcomes the opportunity to comment on Ofcom's revised statement of policy on the persistent misuse of an electronic communications network or service.

Cable&Wireless fully supports Ofcom's objective of providing clarity in relation to the 2006 persistent misuse statement. Indeed we note that some of the clarification addresses Service Provider comments that were made in response to the original October 2005 consultation, which is helpful. We welcome the provision of explicit guidelines and regulatory certainty that should prevent the possibility of any misunderstanding. This will ensure that responsible call centres are not penalised for the actions of a minority within the industry.

We do however have concerns that the proposed amendments in relation to CLI presentation are not consistently applied to the examples given in section 4. The examples do not appear to fully account for the forthcoming change in designation to the 0871 range and as a result there appears to be a disjointed approach to some of the amendments, which we discuss in more detail below.

2. RESPONSES TO SPECIFIC QUESTIONS

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?

Yes, Cable&Wireless agrees that for the most part the proposed changes represent a greater degree of certainty for our customers. We have reservations regarding the CLI presentation proposals, which are explored under the response to question five below.

It is clear from the high level of cost already incurred by Service Providers in complying with the regulations and the significant, yet imperfect, impact it has had upon consumer complaints that further clarity is required to eradicate silent calls. We acknowledge the inroads Ofcom's policy has so far achieved, but agree that the level of complaints remains above an acceptable level. It is questionable whether the cost of implementing the persistent misuse regulation has to date proven to be proportionate to the benefits of improved consumer protection. It is clear that further enforcement by Ofcom may be required in order to reduce silent calls to a level that will allow the focus to shift to self-regulation by industry.

We have also had a customer request for clarification in relation to the two-second threshold for customer salutation. At present they play their message two seconds after the call is connected. Can you confirm whether they will need to extend the length of this delay in order to account for the customer salutation?

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

Yes, Cable&Wireless agrees that a uniform and consistent approach to all automated messages is the correct approach for Ofcom to consider. From a regulatory perspective any attempt to distinguish particular services is likely to be both confusing to those companies engaged in mass calling and impractical from a purely administrative point of view. Such a distinction is also almost

certainly open to abuse as less scrupulous organisations seek to push the boundaries of each service description.

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

Cable&Wireless does not believe this to be a realistically achievable objective. Any criteria are likely to be a source of contention for those operations which are not covered within its scope. We agree with Ofcom that the lack of consensus as to what constitutes public interest makes this a fruitless task.

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

Cable&Wireless believes that limiting call steering only to customers who have given prior consent is a valid option. From a regulatory stand-point it appears to be the most efficient solution as it addresses consumer concern with the services whilst allowing scope for the development of services that consumers find to be of use, such as bill reminders. We would caution that allowing this option to be buried in a customer's terms and conditions will not in the short-term address the current level of consumer complaints until the services become more familiar.

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

Cable&Wireless questions the need to expand the clarification that exploitation of all types of revenue-sharing numbers represents a form of misuse. The 0871 range is soon to be re-classified as Premium Rate by Ofcom and we query why it is necessary to expand the focus beyond the previous statement. If the March 2006 statement identified Premium Rate and revenue sharing numbers, then does this not already cover the 08 range? Not to mention any other potential ranges such as 056.

In addition, the scams Ofcom has identified will only really be economically viable on the higher cost 0871 ranges. These are soon to be covered by PhonepayPlus regulation. In this instance is further clarification necessary? PhonepayPlus already has the ability to act against misuse under the 11th Code

of Practice, whilst Ofcom has the ability to act against misuse on the rest of the 08 range. Whilst we do not oppose clarification per se, we do not believe it is a necessary step and would question whether it is already being addressed through existing Ofcom initiatives such as the Consumer Protection test and the NTS policy changes.

Ofcom's decision to allow 0871 to be used as a presentation number in spite of its imminent classification as Premium Rate has led to something of an anomaly. Cable&Wireless has long been of the opinion that a clear distinction has been needed between 0871 and traditional 09 ranges. This has not happened in either Ofcom's or PhonepayPlus' policies. As a result, care needs to be taken not to cause confusion by failing to take into account the future Numbering designation of 0871. We acknowledge that linking the persistent misuse regulations to the CLI guidelines does help in this respect, but the linkage needs to be maintained throughout the persistent misuse document and in particular to the examples used in Section 4. Paragraph 5.25 on the misuse of a calling line identification facility states:

It will be regarded as a form of misuse to forward a CLI number that has been allocated to a Premium Rate Service provider.

It needs to be clarified whether this includes the 0871 number range or is intended only to incorporate the 09 ranges. Similarly paragraph 5.28 iii refers to premium rate whereas the CLI guidelines refer to "a number that connects to a Premium Rate Service prefixed 09". If these linkages are not made now, they will need to be revisited post the 0871 changes.

Yours sincerely

Justin-Mark Hornby