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BT'S RESPONSE TO OFTEL'S "CONSULTATION ON PROPOSALS TO CHANGE THE FRAMEWORK FOR NUMBER PORTABILITY, JUNE 2002"

This paper provides BT's response to Oftel's Consultation Document "Consultation on proposals to change the framework for Number Portability, June 2002".

BT would welcome any comments on its position as laid out in this document which will also be available electronically at http://www.groupbt.com/regulatory/ .

Comments should be addressed to Howard Erdunast, BT Wholesale Regulatory Affairs, 4th Floor, Dowgate Hill House, 14-16 Dowgate Hill, London EC4R 2SU, or by e-mail to howard.erdunast@bt.com.

EXECUTIVE SUMMARY

1. BT understands the imperative to consider changes to number portability that could benefit consumers following the failure of telecommunications operators (e.g. Atlantic and previously Ionica). In a broader context, BT has worked hard with other operators, regulators and customers to smooth the impacts of previous operator failures and to try to ensure that consumers continued to have ready access to telecommunications services.

2. While the importance of minimising disruption to customers of the failed operator is not in dispute, addressing this importance should not be at the expense of efficiency overall, or additional disruption, which could disadvantage the customers of other operators.

3. BT believes that the Consultation would have benefited from a Cost Benefit Analysis. In the absence of such, BT believes that proper evaluation of the case is inhibited and the specific proposals for dramatic change have not been substantiated.

4. The short-term proposal put forward by Oftel does not appear to BT to be technically achievable, let alone commercially viable. The long-term proposal appears to be a disproportionate response to addressing the problems created by an operator failing – the subject of this Consultation. The case for a need for a central number portability database in the UK has not been made.

5. BT does not believe that a central database should currently be explored, as the costs of such a solution would be high, and the benefits limited and that therefore it would not be a proportionate approach to the specific issue in hand. In addition, with IP solutions imminent, investment in the Oftel proposal would be stranded once the functionality can be achieved more efficiently with new technology.

6. In this response, BT proposes an alternative outline solution for improvements to the Numbering regime that would potentially deliver consumer benefits when companies with number allocations fail. The development of this approach could lead to companies accepting number blocks in an equitable way from failing companies. Customers with numbers on these blocks would then be able to opt for various services which would let them be reached, e.g. by being able to record a message, or by arranging for calls to be forwarded to a new number. In BT’s view, there is not a case for funding by industry and it may well be that some form of support from Government or some central agency is more suitable.

7. BT considers that this option should be fully costed, explored and, if feasible, tested out in a real situation before time and money is expended in considering and developing changes to the existing number portability framework which generally works efficiently and economically. BT would welcome further discussion with industry and Oftel on how to move this issue forward given the key consumer concerns.

INTRODUCTION

8. BT has felt since the failure of Ionica in 1998 that the area of company failures was an area that Oftel should consider. The impact on customers and the industry was far reaching, and provided a potential learning opportunity. More recently, in its Response to Oftel's consultation on revisions to the Numbering Conventions last year, we wrote "BT believes that Oftel should consult on how these *[failing operators]* scenarios will be handled in future, so that companies and customers can be clear what will happen to that company's number blocks, codes (eg indirect access codes), and customers' individual numbers." Thus, BT welcomes the publication of Oftel's Consultation Document "Revisions to the Number Portability Functional Specification - June 2001"; equally, the DTI's consultation issued simultaneously with it - "Proposals to ensure continuity of supply in the event of the insolvency of a telecoms operator". Because the service and numbering issues are almost intertwined, it is difficult to look at them entirely in isolation. That said, it is true that even after an interruption in service, customers taking similar service from a new company are likely to prefer to keep their previous number. This enables them to be contacted more easily by callers and it avoids them having to notify changes to those who might call them, change their stationery, signage, livery etc. As such, there is merit in being able to focus on the numbering issue separately, without getting distracted by continuity issues. However, any solution needs to be technically feasible for implementation. If it holds up provision of service by a new company, it is unlikely to be useful in the context of company failures; the matter at hand.

9. At the time of the Ionica failure, the failure of an operator allocated numbering capacity by Oftel was a new experience for the industry and indeed Oftel, and contingencies had not been made for such a scenario. On that occasion, problems with securing continuity of service for users were minimised as far as possible, but this exercise was very expensive and resource hungry for BT. The response to this situation was very much a one-off, which was difficult enough to handle in a buoyant telecoms market; such a response from BT, could not be repeated in the more difficult industry we see today, and would not be appropriate in any event. Of course, in the main, customers needed to take new numbers when being re-provided with service.

10. BT does not necessarily believe intervention is appropriate. The absence of any cost benefit analysis precludes any real conclusion being reached; however, there needs to be a greater degree of certainty for all stakeholders, including providers and customers, even if it means confirmation of the status quo.

HOW NUMBER PORTABILITY IS PROVIDED

11. Numbers are important to customers and nobody likes number changes. Indeed, the reason that number portability was introduced was because the prospect of a change of number was considered a barrier to competition, and was deemed to act as a significant disincentive when customers might have been considering a change of supplier. In another sphere, it has been argued that the absence of a similar facility

causes problems that lie behind customers' unwillingness to switch current accounts in the banking sector.

12. The onward routing solution to deliver Number Portability was adopted in the UK after lengthy analysis of the alternatives available. The case has not been made here or separately that an intelligent network or central number database solution would now be more efficient in the UK. If it is Oftel's proposition that the Framework needs to be reviewed for reasons other than company failure, then this should be stated explicitly, and examined critically with appropriate analysis. Whilst Oftel seems to be critical of onward routing, and enthusiastic for the alternative, the case is not made in this Consultation for a need to consider change other than in the context of company failures. Given that we believe that the cost to the industry would be well in excess of £100m, costs which would ultimately have to be borne by consumers or tax payers, we do not believe even provisional conclusions could be reached on the merits of taking forward a plan for considering a central database, based on the content of the current Consultation. There is no adequate basis here to conclude that the current number portability arrangements for the UK do not remain the most appropriate. Indeed, Oftel recognises that other similar European markets have refrained from central database solutions.

13. It would have been extremely beneficial for Oftel's Consultation Document to include a cost benefit analysis which considers whether the potential benefits identified in the consultation document either in relation to company failure, or for that matter, more generally, are outweighed by the costs of implementing the suggested solutions. BT's initial provisional figures suggest that both the short and long term solutions seem to represent a disproportionate response to the problem being addressed, namely company failures.

14. Oftel makes a brief reference to the tragic events of 11 September 2001 (paragraph 1.16), stating that a central number database "could make a major contribution to the resilience of the UK telecoms network and its ability to recover from major disasters". Without knowing how Oftel believes it might help, and comparing such measures to arrangements that might apply in the UK, BT believes that it is unfortunate that Oftel should feel it necessary to refer to such an emotive issue in this context. We would welcome this being opened up to more comprehensive debate, but it should be noted that the fact that the USA uses a database, and service was restored quickly in the aftermath of the horrible incident, does not necessarily demonstrate a causal relationship.

15. BT is therefore concerned that Oftel may be using this consultation to facilitate a central numbering database for unconnected developments. BT has in mind here number charging, individual number allocation, pre-allocation portability and so on, for which customer benefit and commercial demand remain unproven and which have not been agreed.

THE ROLE OF NUMBER PORTABILITY

16. Whilst customers may be keen to retain their numbers, they are even more keen not to lose service, and if they do, to get it restored in the fastest possible time. As such, in the crisis situation of a company going out of business, the ability to "permanently" keep a number seems to be very much secondary, other than insofar as a number is needed to allow customers to be contacted. The ability to restore service to customers swiftly and efficiently is of paramount importance. The DTI recognises in its consultation that in the case of Atlantic, "BT co-operated fully with connecting up ex-Atlantic customers as quickly as possible and it is unlikely that imposing additional obligations on them ….. would help connect customers more quickly." Whilst stated in another context, it could equally apply to imposing portability obligations on BT and the industry. It is BT's view that where a company is going out of business, the scenario is fundamentally different and number portability requirements should not get in the way of restoring service slickly.

17. The role of number portability is to promote competition. This simply does not apply in the same way when a customer needs to change companies, because their own company can no longer serve them. As such, BT believes that so long as, at a minimum, callers receive a message on the customers pre-existing number which allows callers to redial them and reach them on a new number, then this offers a way forward. Incoming contact is achieved, business is not lost and the vulnerable can be reached.

18. BT believes that such a pragmatic way forward may be available. It is outlined later and in Annex A. We believe it could constitute a proportionate solution to the difficulties encountered when companies fail. It could be applied in a range of failure scenarios, and it could potentially be implemented in the relatively short term. We also believe that it could obviate the need for a prospectively extravagant long term solution to this particular problem, and may itself constitute a flexible long term solution.

19. BT would be happy to discuss this approach in more detail with Oftel, the DTI, consumer bodies, and industry.

OFTEL'S PROPOSALS

20. Regrettably, BT believes that the short-term solution that Oftel has outlined cannot reasonably be achieved, technically or economically. This is discussed in Annex A. Had it been practicable, a way forward would have been found during the thousands of man-hours spent seeking a solution, in the wake of both previous company failures referred to in this Document.

21. The Central Numbering Database solution appears a disproportionate response to the problems being considered in this document, and moving towards it before assessing the effectiveness of any short-term solution would seem premature. Given the pace of change within the industry, and the move towards IP technology, the nature of numbering and networks is in a state of flux, and heavy investment in the

sort of Database proposed does not seem justifiable. BT agrees that the idea might be rigorously examined, but fears that the industry would be left with an expensive white elephant, the transactions of which will, in a short period of time, be more efficiently carried out using completely different technology.

22. BT's technical and economic comments on Oftel's short-term solution are outlined in Annex A. Comments on the Central Numbering Database Solution are contained in Annex B of this document.

AN ALTERNATIVE SOLUTION TO HELP CUSTOMERS TO KEEP THEIR SERVICE AND NUMBER WHEN AN OPERATOR IS GOING OUT OF BUSINESS

23. The basis of BT's recommended solution is that number blocks of the failing operator be transferred on a basis to be agreed to new hosts. The new host will allow the renters of the individual numbers to take network based services (see below for possible options) which can be remotely accessed and do not need a physical line connected to the number. This avoids the problems with mis-matches of network topography (see Annex A for how this affects geographic number portability). Oftel would need to require that numbers in such blocks be used for only this functionality, and if ported, could again only be used for such functionality. This would prevent different customers situated in different parts of an area being treated differently, and would avoid protracted discussions about the exchange on which a new range should be built, which would only serve to cause delays in provision.

24. BT believes that the re-allocation of the number blocks and thus the numbers should be for a fixed maximum duration, with the numbers subsequently being returned to Oftel. Two years should be more than sufficient, as numbers drop out of usage, phone books and directories. This would promote number efficiency, and would help to avoid artificially inflating the number of ported customers.

25. For their new service, customers would take service with the provider of their choice, on a new number, from their new provider's allocation. This is a far easier proposition than trying to make another operator's numbers fit a new company's network, and would not hold up provision.

26. At the same time, customers' existing numbers would transfer with the block to a new provider, who would offer them a range of network services that excluded the provision of the local loop. A standard set could be agreed across the industry, which might include the following, paid for at normal commercial rates by the customer.

1) **A personalised changed number announcement**. The customer could place a personalised announcement on their old number, from a different line, advising callers how they might be contacted. They would be free to include, for example, their new fixed number, a mobile number, an e-mail address, web-site, or for that matter, their street address – or any combination.

2) **Voicemail**. As 1) except callers could leave messages, and the renter could access them, to hear, save or delete them.

3) **Remote Call Forwarding.** As an alternative to options 1 or 2 above, customers who were prepared to pay for the forwarded legs of calls, might prefer to rent a call forwarding product, thereby delivering calls to a different number – fixed geographic or non-geographic or mobile.

Because these options de-couple the provision of the local access loop and the number, they may be implemented more swiftly, efficiently and economically. BT believes that this solution, alongside the standard provision of new service in the most efficient way for each new company could be equally effective for non-geographic number blocks, where commercial considerations mean that no other company wishes to take on the affected ranges.

27. Whilst customers cannot keep their numbers into perpetuity, it does allow them to manage the transition to a new number over a period of up to, say, two years.

BACKGROUND THINKING

28. As stated earlier, number portability is a facility designed to promote competition in the telecoms industry. It allows customers to exercise choice, that is, to change their telecoms provider in an open market, in the case of geographic numbers, at the existing address, without changing their number and without the perceived hassle of a number change that they would not experience if they chose to remain with their existing supplier. As such, it was not intended to deal with the situation where customers need to change supplier because of a potential insolvency, ie the situation when they **do not have the choice** to remain with their original supplier.

29. BT believes that customers have the right to number portability when they can equally choose to stay with their existing supplier. When customers cannot stay with their company as it is failing, given the over-riding technical issues, **and that the need for a change of number applies equally to customers wishing to remain with their existing company** (including customers who have previously ported from that company to a new company), BT would suggest that these are in fact no longer portability matters. The number portability regulations do not confer upon customers additional rights to their numbers. BT therefore does not believe that there is a legal or regulatory requirement to deliver "portability" in this scenario and as such that it is reasonable for restrictions to apply.

30. Therefore BT believes that a better way of handling this matter might be to consider changes to the Numbering Conventions rather than the Number Portability Functional Specification, as it seems that the difficulties can better be addressed by changes to number block withdrawal and allocation rules and processes.

31. On balance, we believe that the majority of customers would benefit from the proposal we put forward, as this would lead to any further insolvencies being handled far more efficiently than those that have gone before. It looks like giving customers the best chance of retaining contact without significant financial impact, restricts

problems for the industry, and we believe could be introduced far more cost effectively than either of the solutions described in the Consultation Document

32. It also seems to meet Oftel's objective, addressing effectively the Director's concerns "from the viewpoints of both consumer protection and effective competition" (S.7 of this Consultation Document), and certainly we believe the spirit of it, as set out in Oftel's Summary at S.1 as it would "ensure that, in the event of the failure of a telecoms operator, end users can transfer to another operator and still keep their original number". Incoming service insofar as it is number dependent need not be lost. It does however test the apparent premise of a requirement for full service on the pre-existing number.

33. BT believes that a perfect solution does not exist, because of the timescales and costs involved. Assuming that some of the key issues that perhaps fall more to the DTI can be overcome, we would urge Oftel and the DTI to consider it thoroughly.

34. As indicated above, the proposal does have some challenges that need thinking through. It is also not without cost, and the equitable apportionment of such costs would need to be considered in advance and agreed.

35. BT recognises that its own proposition has not been subject to a rigorous cost benefit analysis (CBA), but would urge that Oftel subjects it to the same CBA when the other options are considered. However, we have produced some indicative costs in Annex A.

36. BT welcomes Oftel's acknowledgement in paragraphs 3.6 and 3.7 that "any options must be subject to an appropriate regulatory option appraisal, taking into account the costs, benefits, and impact on consumers and the industry", and that "a full appraisal will be required". Also that action only "should be taken, because the benefits significantly outweigh the disbenefits".

WHO PAYS?

37. BT believes that the costs of any solution should be borne by those that benefit – in this case, it is not the industry. Thus, it would be appropriate for renters to pay the usual commercial rate for any services they choose, their contribution towards defraying the costs of company failure, and towards securing their own service. We would also consider there being a commercial industry standard in such circumstances for say the first three months, to reduce potential customer requests for additional porting at a time when resources are stretched coping with the demands of the failure. Customers would of course be free not to take any of these services and to make their own arrangements for being contacted, eg e-mailing or pro-actively phoning key people.

38. BT believes that the cost of transferring the number blocks between operators should be borne by government or some central agency rather than the telecommunications. This additional cost would result from a change to public policy, and should be publicly funded. The cost to industry of transferring/bringing a number block into service is, we believe, approximately £15-20k, but the figures

would need to be revisited and agreed across the industry. Transferring a number of blocks simultaneously might lead to a lower unit rate per block.

39. This solution sets limited exposure to costs of operators failing. Whilst this needs further exploration, it can be known in advance in each case. BT believes that unless the government considers that the benefits that would arise are worth the cost to it as above, then the status quo should remain.

40. It is worth noting that telecoms operators are likely to be amongst the failing companies' largest creditors – that has certainly been BT's experience to date. To be further hampered by subsidising any rescue activity would be an unacceptable double whammy. Since this scenario arises as a consequence of the public policy of competition and in a competitive world companies may fail, and the availability to many companies of number blocks, the funding for block transfer should most appropriately come from public funds.

41. It should go without saying that if there is no public willingness to share the costs, the status quo should continue. In truth, given the absence of a CBA, it remains far from clear that the "do nothing" scenario in fact is not the most appropriate course of action.

THE PROCESS

42. In order for BT's suggested solution, or for that matter, any other solution to be implemented, there needs to be a trigger point when the decision can be taken that action is required in relation to the number blocks of the failing operator. Thus Oftel/Ofcom could take the view, given its responsibility to secure telephone service to those requiring it on reasonable terms, that the service is in jeopardy, and will give the company due notice before the withdrawals and re-allocations can take place. Such a trigger would need to be defined in say the Numbering Conventions, or in the post-Licence regime, perhaps the Guidelines to the Communications Act. The timing of this would need to balance the interests of the shareholders of the failing company and the interests of its customers and the UK generally. One possibility would be a set duration after the company was placed in administration; say 28 days. The ability to do this might be enabled as a result of the concurrent DTI Consultation. This period will allow DTI/Oftel/Ofcom to arrange the funding and determine how the number blocks will be allocated/distributed between companies, if for any reason they cannot reach an agreement amongst themselves. Objective equitable criteria would need to be devised in advance. This of course is only necessary when alternative commercial arrangements cannot be made.

CUSTOMER DATA

43. Another issue that is vital to the industry to make any solution work well would be the availability of the database of the failing company's customers. Operations to provide service to such customers in the past have been hampered by the lack of its availability. BT would urge that this matter be addressed, and any potential

confidentiality issues for example regarding data protection be resolved in advance by DTI/Oftel/Ofcom.

44. Again, the DTI might introduce measures that required administrators to release this information without charge, in a timely manner, and to all those who might be in a position to serve the customers in the affected blocks. BT recognises that this availability may devalue this as an asset for the administrator, however, without such information early, companies cannot even notify potential customers of their options. During a period when timing is critical, BT would stress that these issues must be considered so that when a process for instigating dialogue with the failing operator and customers kicks in, it can be implemented efficiently.

WHO WOULD TAKE ON THE BLOCKS OF A FAILING OPERATOR

45. BT does not have any fixed views on who should take on the blocks. However, we believe that it should not simply be BT (or Kingston in the case of their main operating area). BT believes that any benefits/disbenefits of hosting the blocks should be spread equitably amongst all range-holders in the relevant areas, say, proportionately to the number of blocks in the geographic areas used, or for non-geographic numbers, in, for example, the price points used. BT does not believe that patterns of ported customers before a failure would necessarily be likely to reflect the choices of customers who had chosen not to export, but would now need to select an alternative supplier.

THE EUROPEAN DIMENSION

46. From this consultation, it is not clear whether Oftel has considered how other countries deal with the scenario of failing operators, given that those in the EU have some of the same regulatory obligations. BT would ask that such a comparison be made, so that it may become clearer what might constitute best practice in the UK marketplace.