Dawn Carre
PhonepayPlus
Clove Building
4 Maguire Street
London SE1 2NQ

dcarre@phonepayplus.org.uk

05 December 2007

# PhonepayPlus (PPP) Consultation on 2008/9 Annual Plan and Budget

## NOC Submission

The Network for Online Commerce (NOC) is a not for profit trade association that exists to promote and facilitate successful enterprise in interactive Telemedia markets around the world. The NOC is uniquely qualified to reflect the views of the UK premium Interactive Media market as its membership spans the entire value chain and is involved in the vast majority of premium value transactions. We welcome this opportunity to comment constructively on the cost proposals for PPP (PhonepayPlus, previously ICSTIS and now trading as PPP) for the year 2008.

Our principle objective of this response is to assist the effective, fair and proportional value for money regulation of Premium Rated Telephony Services (PRS) charged to consumers' telephone bills in the UK, on behalf of the funders of the Appointed Enforcement Agency (PPP) many of whom are our members, and their customers.

**Background**

This review is, like its 2007 predecessor, taking place against a backdrop of dramatically reduced PRS revenues and statutory regulation cost cutting as outlined below.

- 2006 PRS revenues down from £1.6bn to £1.2bn, a reduction of 25%, as forecast by the NOC.
- 2007 PRS revenues estimated to be approximately £0.85-0.9bn, a further reduction of the order of 25%, again as forecast by the NOC.
- 2008 PRS forecast revenues unlikely to recover significantly in the short term and more likely to hold at 2007 levels.

- Changes to mobile data tariffing and packaging may help lift mobile PRS revenues in 2008
- Ofcom continuing under tight budgetary control and targeted with cost reductions according to the RPI-x % formula.
- BERR (formally DTI) continuing to absorb staff cuts of the order of 25-30%.

2007 highlighted areas of industry (call TV / PTV particularly) requiring closer attention by regulator and industry alike. Response by industry has been to invest heavily in compliance systems and infrastructure, and a refining of regulatory responsibilities means industry is on a surer footing to move forward. This mature business environment encouraging greater self-regulation should lessen the regulatory burden on PPP.

Given these market conditions and coupled with the uncertainty of the outcome of the Ofcom Scope Review on the future of PRS regulation we believe it would be prudent for PPP to demonstrate significant cost reductions for this budget cycle. Unfortunately this intent is not reflected in this consultation document.

As we pointed out in the 2007 Budget submission we believe it is essential for PPP to ensure that its planned activities fall within the scope of its Agency remit from the statutory Regulator Ofcom, which is to administer and enforce the Ofcom approved Code of Practice for PRS. We are firmly of the view that any activities outside of this remit must be subject to scrutiny and agreement from our industry, preferably via ILP. We believe there are budgeted costs which are straying into areas beyond the appointed remit and these should be subjected to critical examination.

While we embrace the declared future emphasis on Pre-empting, Preventing and Protecting as certainly being in the best interests of the industry and its customers we do not believe this sits entirely within the PPP remit, nor do we believe PPP is best placed, equipped or funded to properly deliver these objectives without industry involvement bringing experience and skills. Only through genuine industry engagement with the regulatory process can we hope to approach the goal of self regulation as required by the Communications Act.

**Comments on Chairman's Foreword**

The world of "phone-paid" (paid using the phone) services is certainly a changing and expanding one and equally we can see that much of the growth will be in areas that are not covered by the current PPP remit since the final billing to the consumer will not necessarily utilise the telephone account. It follows that future regulation in this field should not be forced to fit the PPP model but that we should look at other established regulatory watchdogs that already operate in relevant fields. Advertising and Finance immediately spring to mind where ASA and FSA are well established.

Perhaps use of the term "phone-paid" by PPP is potentially misleading since the appointed remit refers specifically to Premium Rate Services.

As stated earlier we fully support the principles of Pre-emption, Prevention and Protection but we are not entirely comfortable where this might take PPP ambitions without the advice and guidance available from industry engagement. As an example, the declared intent of offering a compliance advice service to the business community is, on first inspection, laudable but it is then clear that it immediately conflicts and competes with commercial offerings from NOC member companies. This area of business warrants further discussion. Similarly, it would not be appropriate for PPP to issue media or marketing material to the general public in an unsupervised manner where such material may adversely and unjustifiably impact members' service revenues. The Phonebrain site still asks "are you protected against Premium Rate scams?" This is not the best message an industry might wish to take to its customer base and particularly regarding tomorrow's customers.

Given that 0871 income is expected to recover its budgeted regulatory costs (page 23) there should be no need to register estimated costs of £254,000 against this item.

It is pleasing to see that PPP are conscious of the need to demonstrate the cost benefits of regulation but it is clear to the NOC that this PPP Budget needs to more accurately reflect the realities of the PRS market. We would have expected an overall reduction in budget in the current climate reflecting reducing market activity and corresponding reductions in complaints and breaches.

**The Market**

We agree that the imminent release of the Ofcom Scope Review and the resultant Consultation raises a great deal of uncertainty regarding the future role of PPP. We too would not wish to anticipate the outcome but it is not realistic for PPP to assume "no change in the scope of the regulatory regime in the coming year". As itemised above the industry has experienced 2 consecutive years of reduced activity and revenues and the budget document also refers to corresponding reduction in regulatory activity. There is market change and PPP needs to be responsive to the realities of the PRS market.

We are pleased to note that PPP are working closely with other regulatory bodies in this converging industry sector. We encourage this and we believe scope exists for significant savings by avoiding costly regulatory overlap, particularly in the areas of advertising and finance.

The NOC believes planning and policy issues related to the EU and Framework Directives to be the domain of the statutory regulator Ofcom. Clearly there has to be PPP/Ofcom interaction but the responsibility and costs for this reside in Ofcom in our view.

We agree that 2007 has seen a great deal of innovation regarding social networking services but these are not pursuing the historic model of deriving revenue from PRS or subscriptions billed to a telephone account. They do not as yet look to demand the regulatory attentions of PPP.

The use of PRS to monetise broadcast programmes did expand but this market has recently experienced revenue reductions of 50% due to well publicised problems. These problems will be resolved, and industry is actively addressing this, but recovery will take time and will not have a significant impact on 2008 revenues. It is also highly unlikely that these services will repeat their previous mistakes and generate exceptional regulatory costs.

We believe 2007 PRS revenues will record a fall of 25% over 2006 (£0.85-0.9bn, down from £1.2bn) rather than the 17% suggested by PPP. We would not anticipate a recovery of 10% per annum thereafter as anticipated by PPP and we would expect 2008 revenues to hold at £0.85 - £0.9bn.

The fall in the 2007/8 market is most certainly not "almost wholly" attributable to concerns over the problems experienced by broadcast services as stated. The decline in PRS revenues was recognisable long before these occurred and factors contributing to the decline are, we believe:

- Absence of new market entrants due to perceived regulatory risk and costs
- Impact of 11th Code implementation, inc. due diligence costs
- Lack of investment in new services
- Prior Permission process imposing delays
- Loss of 0871 services (supplementary PSMS billing) in February 2006 – major industry impact
- Movement of services to offshore and other alternate billing

The declared reduction in complaints received by PPP is important as is the realisation that the industry reacted quickly and without regulatory prompting to address the emerging problems in the broadcast sector. This situation was as much a regulatory failure as it was an industry one should not be overlooked and, as an exceptional circumstance, it should not be used as an opportunity to increase regulatory costs.

It is noteworthy that PPP admit that 90% of calls to its contact centre are in fact enquiries that are effectively being handled on behalf of the Telephone Service Companies rather than actual complaints. This situation represents the import of costs from networks into PPP and should be reviewed at the earliest opportunity since it is likely to demonstrate the absence of any need to further expand the PPP contact centre.

As previously mentioned we have concerns that PPP is expending industry funds to operate what is effectively a free consultancy service on compliancy to industry in competition with members and Trade Bodies who offer such services on a commercial basis. We believe there is a problem here that will benefit from further discussion and PPP should not be surprised to see an increase of 54% in this activity if it is effectively offered as a "free" service to the PRS community.

The publication of informal proceedings is an issue that is also being addressed outside of this budget exercise but we do not believe PPP should be generating additional cost by formalising and publishing what was previously a low cost and effective way to address minor Code infractions.

The effective use of the Web for consumer information is certainly supported by NOC but we would like to see more engagement with industry on such projects as we believe costs control would be improved and development would benefit from industry experience. As mentioned elsewhere we also have occasional concerns regarding the marketing messages passed to consumers.

**The Approach**

We share the concerns over uncertainties introduced by the forthcoming Scope Review and we believe the use of the term "phone-paid" services as applied to future regulation involving PPP to be potentially misleading. We regard it as important that PPP stay within its allocated remit and address PRS.

To take the four bullets in turn:

- As mentioned above we do not believe PPP should be considering the "phone-paid" services market. The defined PPP role is to address PRS and any other payment mechanisms or service concerns beyond PRS can, if necessary, be addressed by Ofcom and/or other appropriate regulatory bodies.

- While we welcome the declared reduction in headcount it is difficult to comment effectively without sufficient detail on staff deployment. It is noteworthy that staff and accommodation accounts for 70% (£2.8m) of projected costs for 2008 and it once again begs the question as to why PPP needs to incur the high cost of being located in the centre of London.

- We wholly support a shift in emphasis to Pre-empt, Prevent and Protect and away from reactive Code enforcement. While continuing to represent member interests directly to PPP, we would like to see engagement with ILP to understand and assist PPP in achieving this in a cost effective and commercially fair manner.

- We would not expect 0871 responsibilities to be onerous nor should they have a significant impact on PPP costs.

The PRS industry does not perceive PPP to be a "relatively small" organisation. With a £4m cost budget it is a deal larger than many of the organisations impacted by its regulatory activities.

We agree that boundaries between regulatory bodies are not absolute but we also feel that there is boundary confusion and this was highlighted by the reaction of Broadcasters during the recent problems when they perceived conflict between the respective roles of Ofcom and ICSTIS (now PPP). This overlap will become more pronounced as services and technologies continue to converge and will carry unacceptable cost penalties to regulation funders as costly and unnecessary overlap ensues.

With respect to the operational cost assumptions we are pleased to see that any additional work related to 0871 responsibilities can be met from existing resources. However we would not expect any increase in calls to web services to have any serious cost impact nor would any increase in calls to the contact centre where, by PPP admission, only 10% of received calls are in fact complaints.

## Transparency and Performance Management

We are pleased to see that PPP will embrace NOC suggestions that PPP should measure and publish its performance against Key Performance Indicators (KPIs) to assist in the process of accountability. We would like to see the ILP involved in the design and selection of suitable KPIs that will truly reflect the cost and productivity inherent in PPP. In fact the "productivity measures" mentioned in the 3 year plan begin to approach KPIs as they relate corporate output to corporate cost.

## Spending Plans

We believe the overall proposal for a cost budget of £4.4m (an increase of £0.3m or 7.3%) for 2008 to be unrealistic and insensitive to the state of the market that it addresses. Industry revenues are down 40-45% over the past 2 years and the PPP proposals need to recognise this reality.

The 2007 budget, with an initial request for an 8% increase was equally insensitive and was sensibly, perhaps even generously, adjusted down to 0.6% by Ofcom. We believe PPP has to accept that our industry, of which PPP is a part, is going through a period of difficulty and with little likelihood of any significant improvement visible for 2008 revenues the PPP costs budget should ideally be pitched at £3.75m – a reduction of RPI-5% (8.9%) on 2007 expenditure (£4.1m).

Alternatively, Ofcom may consider it prudent to compromise and fix the budget at the 2007 level for the following reasons:

- The Scope Review is incomplete
- The current PPP industry survey is incomplete
- Complaint levels are down
- Industry is continuing to experience a downturn
- Industry confidence and investment is low
- Industry does not expect early recovery
- Absence of clear PPP productivity savings
- Absence of PPP intent to achieve staff and accommodation savings
- Need to contain expenditure within PPP remit

## 0871

We would expect any additional costs of taking this responsibility on board to be minimal. We would also expect any costs for market surveys on non geographic numbering plans to be undertaken and expensed by Ofcom.

## Staff

The statement that 0871 responsibilities will increase staff costs by 7.9% is not understood when elsewhere the message seems to be that no additional costs need be incurred. Staff time that has been expended during 2007 is sunk and can have no impact on the 2008 budget unless capitalised on a project basis.

**Events**

The meetings, Forums, workshops etc. are appreciated and generally well received. On a more cautionary note some of the promotional occasions and material do appear unnecessarily lavish in these difficult times when our industry has staff being laid off and companies going out of business. It would be prudent to demonstrate a reduction of costs in this area.

**External Professional Services**

When conditions demand cost reductions it is unusual for organisations to take functions in house since they tend to come with unavoidable overheads and growing demands for internal admin support. In short, they generate and grow internal cost beyond the apparent savings originally envisaged and we question the logic that assumes recovering "the full employment cost of this role by focusing and limiting our need for external advice". We seriously doubt it and would prefer to see PPP utilising the flexibility and cost control offered by out sourcing.

**Overheads**

Beyond a reference to investing in software there seems to be no information available on this important subject on which to comment. However, this may be the place to repeat our observation that with staff and accommodation consuming 70% of budgeted costs (£2.8m) it is justifiable to question the necessity for PPP to reside in Central London since the savings achievable from relocating would be considerable.

**Printing and Telecoms**

So far as we are able to tell these seem reasonable.

**Website**

It is unclear what costs are referred to in association with the website. Development costs should in our view be listed as capital expenditure and sourced externally as should equipment housing and maintenance. We do not understand how the budgeted amount of £105k will be used.

**Capital Expenditure (£280k)**

Still listed as "Depreciation" in the summary despite previous NOC protestations we must now question what this Capex will purchase. The telephone system (£145k) will assumedly not need to cater for the majority of contact centre calls since 90% have been admitted to be enquiries which belong to the Networks.
In house development of personalised "one-off" software (£50k) is rarely recommended by software professionals if it can be avoided and outsourcing on a project basis is preferred. Excepting the Servers (£18k), there is still £67k unaccounted for.

**Revenue Sources**

If there is a shortfall of PRS revenue against forecast for 2007 (as seems certain) it should not in our view be assumed that any subsequent refunds on excess levy payments will automatically be included as a cost item in the following year. There will, as with any commercial organisation, be opportunities for cost cutting or access to other reserves that could compensate for this.

**The 2008/9 Market**

As we commented earlier in this response we still expect PRS revenues for this year to continue the downward trend of the previous year, down to £0.85-0.9bn. This represents a downturn of approximately 25% which corresponds with the previous year downturn.

We do not anticipate any significant increase during 2008 and we believe it would be prudent to assume revenues holding steady at £0.9bn. We do not expect 0871 revenues to have any significant impact on this market as many services previously using this number range will likely move to 0844 numbers. There will be a number of companies that continue with 0871 vanity/preferred numbers.

This demonstrates a decline in the PRS market of the order of 40-45% over the past two years.

**The Levy**

Given the uncertainties regarding budget approval and the findings of the forthcoming Scope Review it would not be useful to predict any changes to the levy figure at this time.

We note from the latest accounts filed with Companies House that ICSTIS Limited (trading as PPP) posted working capital of £2.05m as of 31/03/07 i.e. prior to the high level fines directed at the Broadcast problems. This figure was up 16% from 2006 and we are unclear how this might relate to ICSTIS' levy requirements for 2008.

**Conclusions**

The PRS industry is suffering its second year of seriously reduced revenues and PPP cannot expect to be immune from market forces in this budget cycle. There is also no PRS industry recovery expected for 2008/9 that might significantly impact the operations of PPP.

The NOC believes there is no justification for any increase to budgetary costs for PPP for the financial year 2008/9 and we would recommend that PPP should realistically accept a reduction of RPI-5% (8.9%) to £3.75m. Alternatively, as a compromise, Ofcom at the very minimum should fix the PPP budget at no increase over 2007 expenditure.

It is important that PPP confines its activities and expenditures to its allocated remit and this would greatly assist in the control and accurate positioning of costs. This would also significantly reduce the required PPP budget since, as admitted in the previous (2007) budget exercise, the majority of costs are expended on "non core" activities. It is interesting to note that in ICSTIS's 2007 filed Report and Financial Statements, ICSTIS declared that it has assumed the role of "a consumer protection body operating on a co-regulatory basis" in addition to the role of supervising the PRS Code of Practice. We would like to understand when Industry agreed to fund this changed and potentially costly role and we would like to see some meaningful discussion on this subject at the ILP forum.

It is our view that, via ILP, Industry would be ready and willing to co-operate with PPP on “non core” industry financed initiatives with clear benefits to all but these should be accounted separately and jointly with ILP and not under the sole authority of PPP.

We can clearly see an industry trend to monetise content away from the PRS model towards ad funded, sponsored or credit card financing. This will have a significant impact on the future role or even necessity for the current PPP PRS regulatory watchdog model. Overlap and conflict between regulatory authorities is a subject that needs to be addressed without delay as the services universe continues to converge.
We await the Ofcom Scope Review and the subsequent Consultation with interest and this is certainly not the time for PPP to be investing industry money in a changing role for an uncertain future. It has been some time since the role and organisation of the Enforcement Agency was last audited and this may be an opportune time to repeat this exercise unless it is adequately addressed in the Scope Review.

**Statement of Representation**

The NOC confirms that this response has been compiled following a process of circulation of the relevant Consultation documentation to all NOC members. A list of NOC members may be found at www.noconline.org/currentmembers.aspx.

The views expressed in this response are a fair representation of the views held by the responding NOC membership. Individual members are actively encouraged to submit their own independent views as they deem fit and at their sole discretion.

We look forward to your response and assure you that, as ever, our comments are made constructively and with the aim of achieving an effective, fair and proportional regulatory regime for Premium Interactive Media services in the UK using the PRS billing model.

If any clarification to our response is required, or if we can be of any further assistance, please contact Zoe Patterson 01273 863223 or zoe@noconline.org.

Sincerely

Toby Padgham
NOC General Secretary