



**Regulation of PRS used in Television
Broadcasting:
A Policy Statement by PhonepayPlus
following
its consultation about Introducing Prior
Permission for Premium Rate Services
used in Television and Radio Programmes**

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Executive Summary & Background

From the middle of February 2007 PhonepayPlus and Ofcom became aware of a number of apparent problems relating to premium rate and/or production compliance for voting and competition entry on mainstream television channels and, to a lesser extent, on radio. The allegations, many of which were reported extensively in the media, suggested that the PhonepayPlus Code of Practice and/or the Ofcom Broadcasting Code had not been complied with and that consumer trust in premium rate services was consequently being eroded.

PhonepayPlus and Ofcom investigated alleged breaches of their respective Codes, working together to ensure issues were addressed by the body most appropriate to the individual incidents, and jointly in cases where there were obvious and serious issues of shared concern. This resulted in a series of high-profile sanctions brought by both regulators against various PRS service providers and broadcasters.

Moreover, given the growing media reports of problems with premium rate usage in broadcasts, PhonepayPlus felt wider immediate action was needed, and held an industry meeting on 8 March 2007. It was the view of the wide range of industry practitioners present, and Ofcom, that there was a need for action to address the issues of compliance and trust. Many stakeholders expressed support for a proposal to license premium rate services used in broadcasts.

In the wake of this meeting, broadcasters agreed to audit their current and forthcoming services to ensure Code compliance and to report to PhonepayPlus on their findings. The exercise added to our understanding of the different risks associated with services of varying size or nature and the different mechanisms for entry, most obviously red button, text and call-in participation.

Broadcasters' responses to PhonepayPlus contributed to the proposals which we outlined in our consultation paper "Introducing Prior Permission for Premium Rate Services used in Television and Radio Programmes", published on 15 May 2007. The consultation sought the views of interested parties on a proposal to introduce "prior permission" licences for PRS used in broadcasting, with separate conditions concerning:

- Connectivity and Capacity
- Conduct
- Cost
- Coherence

On 22 March 2007, in an effort to understand the root causes of the failures in compliance which had emerged where PRS was used in broadcasting, Ofcom announced an inquiry into the use of premium rate services in television programmes. The inquiry was led by Richard Ayre, a member of the Ofcom Content Board, with PhonepayPlus represented on the inquiry steering group. Ahead of the inquiry's final report and recommendations, PhonepayPlus and Ofcom agreed that PhonepayPlus should continue to consult on a proposal to introduce a prior permission regime for PRS used in broadcasting. It was further agreed that no final regulatory decisions should be taken by either organisation until the outcome of the Ayre inquiry was known and Ofcom had the opportunity to consider any strategic policy responses.

The Ayre Inquiry's report was published on 18 July 2007, and can be found at: <http://www.ofcom.org.uk/tv/rfi/prsinquiry/ayrereport/>. Among its recommendations was that Ofcom should consult on a licensing regime for broadcasters, and to avoid unnecessary

duplication both organisations agreed to make a joint regulatory decision after the results of the subsequent Ofcom consultation were known.

With the Ofcom consultation now complete, Ofcom has concluded that it is necessary to amend the licences it issues to TV broadcasters to make them directly accountable for their use of PRS to interact with the viewing public. In addition, broadcasters will be required to secure independent oversight and advice on the systems they have in place to verify continuing compliance with these new licence obligations. Ofcom has also issued guidance which sets out its expectations of PRS in TV broadcasts to support this process. This gives clarity that Ofcom is the lead regulator for the use of PRS in TV broadcasts, as it places overall responsibility for compliance on broadcasters. These documents are on the Ofcom website.

Whilst broadcasters can provide assurances to Ofcom that their systems for providing PRS are effective and compliant, they are still reliant on the service provider with whom they contract for delivering on some of those assurances. In cases where the service provider is directly responsible for consumer detriment, both regulators agree that in order to ensure consumer protection and market integrity there may be a need for action beyond that taken by Ofcom against the responsible broadcaster.

Respondents to the PhonepayPlus 2007 consultation generally accepted that some form of prior permissions regime was appropriate, but also stressed three other points:

- That responsibilities in the value chain for PRS used in broadcasting should be clearly delineated between service providers and broadcasters
- That all parties should be brought tightly together in a compliance framework
- That service providers would prefer to remain answerable to PhonepayPlus, and broadcasters to Ofcom

In light of respondents' views, and in order to ensure that service providers, as the partners of broadcasters who use PRS, deliver Ofcom's objectives PhonepayPlus has concluded that a Prior Permissions regime is appropriate for service providers who wish to partner broadcasters in providing PRS to viewers. A formal Notice requiring service providers to obtain prior permission from PhonepayPlus if they wish to provide or to continue to provide Broadcast PRS as defined in the Notice is published simultaneously with this document. Such prior permission will apply to the individual service provider, and all relevant services it provides, rather than to individual services.

In light of feedback from radio broadcasters, and Ofcom's decision not to include radio in its proposals to license broadcasters who use PRS, PhonepayPlus will not require service providers to seek prior permission to provide PRS on radio. PhonepayPlus will work with Ofcom on this issue as Ofcom re-consults on it during 2008.

Responses to the PhonepayPlus definition of Broadcast PRS; the different Conditions in the proposed prior permission regime; and proposals to include or exclude other types of Broadcast PRS are set out in Sections 1-4 of this document.

Section 1

Definition of Broadcast PRS

The editorial content of broadcast output now includes many different forms of PRS. These can provide, among other things, a means for consumers to vote in a talent contest, enter a competition, or submit an opinion, pictures or video footage captured on their handsets. In more niche channels, where the programme funding comes from the revenues from the telephone calls rather than commercial advertising, channels can be dedicated to chat and auction services, or Call TV Quiz Services.

PhonepayPlus recognised that the definition of PRS used in broadcasting would have to be comprehensive and future-proof. However, some areas of PRS used in broadcasting (e.g. Call TV Quiz services or chatlines) are already controlled by PhonepayPlus prior permission requirements, and we were careful to explain how any new controls would relate to such services.

PhonepayPlus proposed the following definition:

"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."

Q1. Do you agree with this definition of Broadcast PRS? If not, then what would you propose instead?

Respondents generally accepted that some sort of definition was required along the lines PhonepayPlus suggested, with only two respondents rejecting the need for an encompassing definition.

A number of respondents suggested changes to the definition. This was either on the basis that services carrying the same risk as those defined may be excluded, or on the basis that services which carry little or no risk are included.

Some specific suggestions were as follows:

Definition might benefit from including a statement that makes it clear this is not advertising airtime - e.g. "PRS which are promoted on TV or radio as part of editorial airtime and which provide . . ."

Any proposals need to allow for convergence in the media sector and for the fact that high-profile non-broadcast PRS services may exhibit the same risk factors.

. . . would suggest simplifying the definition so that an exemption is not required. To achieve this, the definition could be amended to read: "premium rate services which are promoted in television and radio programmes and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever". The addition of the term 'programme' would therefore by definition exclude broadcast advertising.

We propose that the definition should also include premium rate services promoted on a broadcaster's website and associated with a broadcast programme

We feel a simpler and less cumbersome definition would be achieved by omitting the last eleven words, so the description read: "premium rate services which are promoted on

television or radio and which may provide a facility for interaction or the provision of information.”

Perhaps the definition should read: "(prs) which are promoted on television or radio, other than live 121 chat or within advertising breaks and which provide . . .”

Is it PhonepayPlus’ intention that web-based TV and/or IPTV falls within this prior permission requirement? Some clarity is required on the scope of the definition.

The definition could be amended as follows: ‘a service which permits viewers whilst viewing or listening to a television or radio broadcast programme to interact with such broadcast programme in any way whatsoever including by way of voting, entering into competitions, placing bids, obtaining information or otherwise, for a premium rate charge to the viewer, but excluding any interactive service not editorially related to the programme, which is available by exiting the linear broadcast programme’.

Question 1 Conclusions

Respondents were clearly concerned that our definition should not accidentally include PRS advertised during commercial breaks. In light of these considerations, our need to future-proof any definition for developments such as web-based TV, and our need to include, where appropriate, PRS used in TV broadcasts beyond just voting and competitions, PhonepayPlus concludes that the final definition of PRS used in TV broadcasting should read:

“Premium rate services which are promoted on television (other than by commercial advertising) however transmitted, and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever.”

In light of feedback from radio broadcasters, and Ofcom’s decision not to include radio in its proposals to license broadcasters who use PRS, PhonepayPlus has changed the original definition to exclude PRS used in radio broadcasting. Ofcom intends to consult during 2008 on whether PRS used in radio carries significant risk, and PhonepayPlus may amend its definition of Broadcast PRS to include radio based on the evidence gathered at that time.

Section 2

Conditions Relating to Prior Permission

Connectivity and Capacity

PhonepayPlus proposed the following conditions in respect of Connectivity and Capacity:

- a) There must be sufficient time for all valid responses sent by viewers or listeners to be considered and reflected in any outcome of the event (where there is one) which may then be reported on air.
- b) Where arrangements exist for the handling of excess peak traffic by additional parties, these arrangements must ensure that all valid votes and entries so handled are treated equally with those received by the primary party.
- c) Red button interactive calls made prior to the time announced for line closure must complete the relevant competition entry/vote count process.

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

In terms of evidence that the receipt of calls before lines have opened or after they have closed is a problem, very few respondents said that problems are routine or non-existent. The majority either gave no comment, or suggested that such problems exist but are not widespread in their experience.

The exception to this was from radio broadcasters, who uniformly made the point that radio does not receive the same volume of PRS participation as television, and so has no problem with counting votes or entries. In addition, radio shows are more flexible generally than television, in that it is easier to delay results until a problem has been fixed.

Some specific suggestions as to how this problem might be addressed were:

- The use of fixed line platforms that can play different messages, and not charge consumers for doing so
- The banning of MO billing (where consumers are not sent an SMS acknowledging receipt of their entry)
- Clear on-screen messages that lines are now closed, and that anyone subsequently calling will be charged
- A 4-10 minute latency window for SMS messages to arrive after lines close, which would allow for network congestion.

Many broadcasters and service providers said that they would welcome a technical solution to the problem of callers being charged for calls or SMS messages before or after a competition is live, but that this was a matter for telephone networks. Some respondents mentioned that BT Ride, one of the biggest network platforms, was not capable of allowing callers to receive a free message saying a competition was closed as it charged upon

connection. PhonepayPlus understands from BT that this is no longer the case, which may make our proposals easier to implement for some respondents.

A clear majority of respondents agreed with PhonepayPlus' proposed conditions in principle. However, two caveats were identified:

- that not all calls/texts may be counted in every service due to "latency" issues caused by some network congestion. This was especially so in the case of SMS.
- that service providers unanimously believed that the timing of when a competition closes, and how a winner is picked, is outside their control, and that responsibility for the connectivity and capacity conditions should be with the broadcaster for this reason.

Questions 2 & 3 Conclusions

As with all the subsequent considerations in this response, PhonepayPlus has had to take account of events (i.e. the Ayre Inquiry and subsequent Ofcom consultation) that rightly affect our decisions as well as the views of our respondents.

In terms of our proposed conditions around Connectivity and Capacity, condition a) – to ensure that there is adequate time for all valid responses to be considered – is a responsibility typically divided between service providers and broadcasters, with the former also partnering with networks who also have responsibilities. Service providers are responsible for the safe delivery of votes or competition entries, and may also shortlist correct entries before passing them to a studio, but it is broadcasters who are responsible for processing and presenting the outcome of any vote or competition. In light of Ofcom's decision to set PRS conditions as part of its licence for broadcasters, it is not appropriate for PhonepayPlus to address broadcasters' responsibility in this area. However in order clearly to delineate responsibility in this area, we propose to alter condition a) to read:

- Service providers must ensure that all valid responses sent by viewers are available in sufficient time to be fully considered and reflected in the outcome of any event.

PhonepayPlus recognises the steps that all parts of the PRS value chain have taken to improve their technology since the problems with PRS used in TV broadcasting first became apparent, many of which address latency issues. As with condition a), PhonepayPlus considers that service providers should take reasonable steps with their partners in the value chain to ensure that all PRS votes or entries which consumers send before a deadline are included, so we will retain conditions b) and c) around Connectivity and Capacity.

Conduct

PhonepayPlus proposed the following conditions in respect of Conduct:

- a) Calls and SMS entries must not be accepted before lines have been announced as opened or continue to be accepted after an announcement that lines are closed has been made. After an announcement that the lines have been closed has been made, the lines must be closed.
- b) Terms and conditions must be comprehensive, clear and up-to-date, and all amendments made during the service must be appropriately publicised. It must be clear whether and, in which case, how amendments during the course of the

service may be made. No amendments should be made retrospectively if they affect the position of existing entrants, including their decision to participate at all.

- c) Phone lines must not remain open when programmes are repeated.
- d) Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.
- e) Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie-breaker or totally skill-based outcome.
- f) In any competition where a prize is worth £5,000 or more, there must be independent third party verification of the fairness of winner selection.
- g) Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.
- h) In respect of competition services, records and evidence of winners and the distribution of prizes must be maintained for a minimum period of 12 months from closure of the competition.
- i) Customer service arrangements for handling participant enquiries should be in place.

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

No respondents fundamentally disagreed with the conditions surrounding conduct. However, there were a substantial number of comments and suggested amendments, summarised below:

- That the conditions should be altered to recognise it is possible for a repeat or a recorded programme still to have a genuine interactive element open. This view was put forward across the spectrum of respondents
- That preventing any change to the Terms and Conditions of a competition once it has commenced may prevent the swift correction of a genuine error. This was a view espoused by both radio and television broadcasters.
- That the £5,000 threshold, above which competitions should be independently verified, is too low, and should be increased significantly if the cost is not to be onerous to the competition organiser. This was, again, a view especially taken by broadcasters.
- That clarity was required on the customer service arrangements. Would they need to be in place 24 hours a day, or on a 9-to-5 basis?
- That clarity was required on the exact nature of the competition records PhonpayPlus would require to be held for 12 months. Some broadcasters felt that this time should be reduced to draw into line with Ofcom's requirements, but others felt 12 months was acceptable.

- That an independently verified computer system should be acceptable for the selection of competition winners, rather than a third party needing to be present on every occasion.
- That there should be a specific prohibition on broadcasters selecting a winner before a competition has closed. This was put forward specifically by Virgin Media, but alluded to in other responses.

Responses frequently made the point that the requirement to close lines as soon as a competition or vote was announced as closed was beyond the control of broadcasters or service providers. This was especially the case for SMS entry routes, where technical issues would require resolution if all networks were to shut down their entry routes simultaneously. It was widely suggested that a standard solution should be agreed and then applied to all parts of the value chain.

Question 4 Conclusions

In light of Ofcom's decision to set licensing conditions for broadcasters using PRS, PhonepayPlus again considers some of the conditions it originally proposed to be unnecessary for application to the service provider. We consider that conditions b), d), g) and h) are responsibilities that must sit with broadcasters, and so do not propose that these conditions form part of our Prior Permissions regime.

We recognise that condition f) may apply to service providers on occasions where they randomly select a correct entry in a competition, before providing that information to a studio, but have excluded it in light of Ofcom's decision to include guidance to broadcasters around winner selection.

In respect of the remaining conditions PhonepayPlus welcomes industry feedback around a standard technical solution for simultaneous shutdown of network entry routes, but considers this agreement must be industry-led. The expectation PhonepayPlus sets out in condition a) is clear, that calls should not be charged or counted as a relevant entry either before lines are announced as open or after they are announced as closed, and we would expect service providers to ensure this expectation is met. This being so we intend to alter the wording of condition a) to read:

- Calls and SMS entries must not be charged or counted as a relevant entry before lines have been announced as opened or be charged or counted as a relevant entry after an announcement that lines are closed has been made. Immediately after an announcement that the lines have been closed has been made, the lines must be closed provided that calls made but uncompleted at the time of the closure announcement must be allowed to be completed.

Whilst we received little comment about condition c), we consider that, in light of Ofcom's licensing conditions, the responsibility to obscure a premium rate number when a programme is repeated must sit with broadcasters, and so intend to alter the wording of condition c) to read:

- Phone lines must not remain open when programmes are repeated.

Other than condition a), the majority of feedback surrounded conditions that we do not now propose to include in a Prior Permissions regime. The exception was condition i), where some respondents requested clarity on when a customer service line should operate.

PhonepayPlus considers that customer service arrangements should be able to perform two main functions:

- To communicate with consumers in the event of delay, or other fault in the mechanics of a TV show, and reassure them, for instance, that either their entries will still be counted or that they will receive a refund.
- To deal with more specific complaints and queries that consumers may have some time after the show itself.

PhonepayPlus considers it is for service providers to decide how these requirements are best met. Our Compliance Advice Team can provide advice on this and any other condition.

PhonepayPlus therefore concludes that conditions a), c), e), and i) will form part of our Prior Permissions regime.

Cost

PhonepayPlus proposed the following conditions in respect of Cost:

- a) Pricing information must be displayed in a way that is prominent, clear and accurate.
- b) It must be made clear that the cost of calling from different networks may vary including, where relevant, from fixed line operators who can and do charge 'set-up fees' for some premium rate services.
- c) Services involving a charitable donation must make clear how much of the call cost will go to charity and must otherwise accord with charity law.

Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

The majority of respondents across the spectrum agreed with these conditions. Of the three who disagreed – a network, a trade association, and a service provider – none disagreed with the requirements themselves, but felt they would be better achieved with a Statement of Expectation than a Prior Permissions regime.

Of the further points raised around this question, by far the largest was that of transparency of call costs – both in actuality and as displayed on screen. The majority of service providers and fixed line networks who responded expressed the opinion that the biggest obstacle to pricing transparency was the different tariffs imposed by the mobile networks for customers who call PRS lines. Many respondents believed that a tougher stance was needed on pricing information, and that the subject should be referred to Ofcom to examine the variance in mobile tariffs for PRS calls. In view of the Ofcom Scope Review of PRS regulation, PhonepayPlus felt variance of mobile tariffs would be better considered by that review, and forwarded information accordingly.

Other notable points made by individual respondents were:

- That there should be an overriding right of any party in the chain of responsibilities to be able to refuse to continue if it felt that inappropriate requests were being made of them. This would have more power if the party were also required to alert PhonepayPlus if this happens.

- Clarity as to whether spoken reinforcement of the cost message is always required whenever entry details are promoted
- Rules on the proportion of revenue converted to charitable donations should take into account that sometimes all profits will go to charity, or profit will be divided between charities. In these circumstances the respondent considered it unnecessary to list PhonepayPlus' proposed requirements on-screen

Question 5 Conclusions

PhonepayPlus has firm regulation, supported by guidance, that requires pricing information to be provided for all PRS services prior to the user incurring any charge. However in light of Ofcom's decision to include a responsibility for clear pricing information during television programmes that use PRS in its Guidance to Broadcasters, PhonepayPlus concludes that there is no need to set the same conditions for service providers. PhonepayPlus therefore concludes that none of our proposed conditions concerning Cost should form part of a final Prior Permissions regime for service providers.

Ofcom has issued guidance about pricing information, which outlines the requirement for broadcasters to make clear that the cost of calling a PRS number to participate in a service may be significantly higher when using a non-BT network. PhonepayPlus will amend its Helpline on pricing information in respect of Broadcast PRS to make this guidance consistent across both regulators insofar as it relates to Broadcast PRS.

Coherence

PhonepayPlus proposed the following conditions in respect of Coherence:

- a) Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for the performance or management of each activity associated with the service.
- b) There must be no amendments to operational systems or procedures relating to the service without senior management authorisation.
- c) All staff, whether internal or employed by contractual partners, must have the PhonepayPlus Code of Practice drawn to their attention and have suitable training.
- d) Procedures must exist for the back-up of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS.
- e) Subject to reasonable notice from PhonepayPlus, service providers must make provision for PhonepayPlus staff and/or its agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

Again, the majority of respondents were in general agreement with these conditions.

The one area of contention was PhonepayPlus having the power to enter premises and have access to relevant documents. This was objected to by nearly all networks and trade associations, who argued that PhonepayPlus already has the powers to demand any information from them under paragraph 8.1.3 of the 11th Code, and that failure to comply with such an instruction is a breach of the Code in itself. As a consequence they could see no need for additional powers in this area. Conversely some service providers welcomed this approach, on the grounds that it would contribute to a tougher regime that would drive rogue organisations out of the market.

The majority of service providers expressed the view that these requirements should apply to all parts of the value chain, and not just themselves.

Two other notable points were repeatedly raised:

- That greater clarity is needed on the definition of “senior management”. It was suggested that named positions, rather than individuals, be identified within each organisation.
- That the requirement for staff training should be tightened to reflect that only staff within an organisation who deal with PRS as part of their duties should need training in the PhonepayPlus Code and requirements.

Question 6 Conclusions

PhonepayPlus considers that none of the proposed conditions around Coherence are solely the responsibility of the broadcaster, so we do not propose to rescind any of the conditions in light of Ofcom’s decision to set licensing conditions for broadcasters who use PRS.

In seeking power to visit premises and see relevant documents PhonepayPlus intends to reinforce its monitoring effectiveness in order to help to prevent problems arising or to identify them at an early stage. Paragraph 8.1.3 is applicable only in the context of an investigation.

We intend to change the wording of coherence conditions a) b) and d) to read:

- Contractual arrangements between service providers and any parties with which they contract in respect of the provision of the relevant Broadcast PRS must clearly and coherently identify which party is responsible for the performance or management of each activity associated with the service.

Condition b) will be altered to read:

- There must be no amendments to operational systems or procedures relating to the service without senior management authorisation. The service provider’s procedures must identify senior management positions within its organisation with the power to authorise such changes.

Condition e) will be altered to read:

- Subject to reasonable notice from PhonepayPlus, service providers must make provision for PhonepayPlus staff and/or its agents to visit their premises from which they provide any relevant service and have access to any documents or records relevant to the provision of the service.

Section 3

Regulatory Considerations for other forms of Broadcast PRS

Radio

Q7. Do you agree with our analysis that the same inherent risk for premium rate use in programmes on television also exists in radio?

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Whilst the majority of respondents agreed that radio carried the same risks as TV in terms of PRS, these were cursory responses from non-radio broadcasters. The responses from radio broadcasters or radio trade associations can be best summed up by the following two responses:

We believe that [consumer risk] is on a smaller scale purely because there is nowhere near the amount of activity as in television and we believe that as there is less volume of entries, the risk of call/entry/count urgencies is lower although still possible

We believe radio has longer history of interaction with its listeners than other broadcast media, and so is not addressing issues of compliance for first time, as PhonepayPlus seems to portray.

Radio broadcasters generally agreed that there was some risk, but felt it was too low to require an extension of PhonepayPlus' proposed Prior Permissions regime. One radio broadcaster made the suggestion that, should any Prior Permissions regime be extended to radio, the requirement be reviewed after 12 months based on levels of consumer harm.

Question 7&8 Conclusions

In light of feedback from radio broadcasters, and Ofcom's decision not to include radio in its proposals to license broadcasters who use PRS, PhonepayPlus will not require service providers who partner with radio broadcasters to seek Prior Permission for these services. PhonepayPlus will work with Ofcom on this issue as Ofcom re-consults on it during 2008.

Specific Types of TV Broadcast PRS

Q9. Do you agree with our proposal to require providers of Call Quiz TV Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not?

Q11. Do you agree that music channels using premium rate votes from participants to determine playlists should be included with the need to obtain prior permission? If not, why not?

Q12. Do you agree with our analysis that PRS services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

These questions dealt largely with PhonepayPlus' proposals either to include or exclude types of Broadcast PRS from any proposed prior permission regime, and the majority of responses across the spectrum were merely to signal agreement. Respondents often expressed the belief that if PhonepayPlus were to introduce a prior permissions regime for Broadcast PRS, then it should apply across the board.

The exception to this opinion was in respect of chat services, where the majority of respondents agreed with our assessment that chat services should be excluded on account of a separate PhonepayPlus prior permission regime already in existence for them.

Comments about specific conditions in relation to service types were as follows:

Call TV Quiz services

That conditions around conduct should incorporate the position of timeshifted or "plus one" channels. These channels broadcast the output of their parent channel one hour after it was first broadcast, allowing viewers to view shows they may have missed. Call TV Quiz services have PRS lines that are open for long periods, and it is possible that a viewer watching a "plus one" channel could call in to give an answer for a phase of competition that had already closed. The way to solve this problem could be to have a requirement on the "plus one" channel to refer viewers to the live channel if they wish to participate in the programme.

Auction TV

That a "cooling time" is introduced when the SMS bidding on a particular item has closed, which would allow any consumer bids delayed by network traffic problems to be received and considered. A list of winning bids could then be displayed, either online or on-screen, once the cooling period had closed and all bids had been properly considered.

Music Channels

That it may be worth considering further requirements such as the position where a particular request is in the queue, with a subsequent estimate of how long before the request will come to air, should be displayed on screen, based on the number of requests in the queue.

That music channels offering the facility to vote/select a song need to make it clear that it does not guarantee the song/video is played, unless the song is placed in a queue and will eventually be played, as outlined above.

Charity

One respondent expressed the view that if charitable PRS promotions are similar to competitions and carry similar risks then they should be included in a Prior Permissions licence. If however they are simply a donation line and have no associated interaction then the current regulation adequately covers this type of service.

Other Broadcast PRS services which should not have to obtain prior permission

Respondents suggested that a number of future developments may need to be discussed with PhonepayPlus before their introduction, and that they would seek continuous and open discussion with us in order to discuss suitable regulation. Other services were suggested for exemption on the grounds that they were non-contentious. Specific suggestions for exclusion were:

- Pay per play games (accessed using red button)
- News and weather
- Travel information

Questions 9-14 Conclusions

In light of the relatively straightforward expressions of agreement we received, PhonepayPlus intends that the final Prior Permissions regime will extend to all TV broadcast PRS. However in light of existing prior permission requirements that cover chat services and Call TV Quiz Services, we will exempt them from the Broadcast PRS prior permissions regime at this time, although we will keep the conditions applicable to those categories of service under review.

In terms of other Broadcast PRS, we would consider pay per play games accessed through red button to come under our definition of PRS used in TV Broadcasting. However despite the fact that they are accessed through digital or cable television boxes, taking all circumstances into account we would consider pay per play to be akin to video games downloaded to a consumer's mobile phone, and intend to regulate them in the same way. This being so there is no reason for this type of consumer interactivity to be included in this Prior Permissions regime.

We would also consider any PRS product to be part of this Prior Permissions regime where they were promoted as part of TV output and called or downloaded by a consumer. This would include news, weather, travel, or any other information when offered at a Premium Rate, or PRS competitions advertised after a television programme that are linked to it.

There is also an increasing trend for broadcasters to invite viewers to send texts stating their views, or pictures of weather, or video footage of events the user considers newsworthy. In addition industry trends point towards viewers being invited to send pictures or video footage, recorded on their handsets, to programmes for the purpose of entertainment rather than to express views or provide information. Where these types of service carry a premium rate charge, PhonepayPlus will again consider it necessary for the service provider to have Prior Permission to operate PRS services for broadcasters.

PhonepayPlus will publish from time to time a list of categories of service which, although within the definition of Broadcast PRS, are exempt from the requirement to apply for prior permission.

Section 4

Regulatory Responsibilities for Broadcast PRS

Lastly, three questions in the consultation paper focused on the value chain issues. These were:

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to PhonepayPlus for Code and condition breaches?

Few respondents offered substantive views on Questions 16 & 17, choosing instead either to cover them in their response to Question 15 or to offer no comment.

There was a general acceptance from respondents that some further regulatory intervention was necessary, but many cautioned against regulatory action that overcompensated given the steps taken by many service providers and broadcasters to rectify problems.

Again, there was general acceptance of the need to introduce some form of prior permission. Unsurprisingly service providers generally felt such a regime should be targeted at broadcasters, and vice versa. Many service providers and broadcasters also said they would prefer to maintain a regulatory model where service providers are answerable to PhonepayPlus and broadcasters to Ofcom.

Notwithstanding their opinions on who should be the focus of Prior Permission, many respondents stressed the need for responsibilities in the value chain to be clearly delineated between service providers and broadcasters in order correctly to target any sanction for non-compliance. Whatever the final regulatory model, it was clear that respondents wanted to ensure that all parties were brought tightly within a compliance framework.

Networks generally expressed a different opinion from other respondents, feeling problems could be addressed through a Statement of Expectations for PRS used in Broadcasting rather than a Prior Permissions regime.

Questions 15-17 Conclusions

As previously outlined in this document Ofcom has concluded, after consultation, that it is necessary to amend the licences it issues to TV broadcasters to make them directly accountable for their use of PRS to interact with the viewing public. Broadcasters will be required to secure independent oversight and advice on the systems they have in place in order to verify the arrangements for these services in accordance with their licence, and Ofcom will issue guidance which sets out its expectations of PRS in TV broadcasts to support this process.

PhonepayPlus and Ofcom agree that whilst broadcasters will be responsible for their use of PRS, they are reliant on assurance from service providers in respect of the technology that allows consumers to enter or vote. A broadcaster may be able to provide the verification required by its licence from Ofcom in good faith after seeking assurances from the service provider in respect of its systems and PRS technology, but there will be cases where the service provider fails to deliver, leading to consumer detriment. In these cases the service provider may be found to be directly, and/or solely, responsible. For this reason both regulators agree that PhonepayPlus must continue to act to ensure consumer protection and market integrity within the PRS arena.

In light of stakeholder responses to this consultation, and our discussions with Ofcom, PhonepayPlus has concluded that a Prior Permissions regime is appropriate and proportionate for service providers which wish to partner broadcasters in providing PRS to viewers.

The majority of respondents, especially among broadcasters and service providers, clearly indicated that they felt some form of Prior Permissions system was appropriate. Their concern was that a regime that focused only on service providers or only on broadcasters would make one responsible for the other's actions, even where those actions were beyond the control of the licence holder. An additional concern was that PhonepayPlus and Ofcom should work to ensure the value chain was tightly drawn together, and responsibilities were clearly delineated, as a lack of clear distinctions had led to many of the identified problems.

Requiring service providers to seek a PhonepayPlus Prior Permission and broadcasters to meet PRS conditions in respect of an Ofcom licence will ensure that the appropriate party is held responsible by the appropriate regulator. PhonepayPlus and Ofcom have worked closely together to ensure that the new arrangements cover all the risks of which the industry has made us aware, and that responsibility is clearly delineated between them.

PhonepayPlus will expect service providers who apply for prior permission to provide PRS to broadcasters, clearly to outline the processes by which they will achieve each of the prior permission conditions. The permissions will permit service providers to provide PRS within the broadcasting arena, but will not act as an explicit approval of each service provider's processes. PhonepayPlus will consider revoking permission where a service provider has clearly failed to meet its conditions.

Where a broadcaster has taken the service provider element of its PRS "in-house", rather than contract with a service provider, PhonepayPlus will consider the in-house entity to be a service provider (provided it meets the definition of service provider under the PhonepayPlus Code of Practice) separate from the broadcaster, and will expect it to seek prior permission accordingly.

Section 5

Next Steps

The new Prior Permissions regime is set out in the Prior Permissions Notice published simultaneously with this document. The Notice takes effect **4 weeks** from the date of its publication. This is in order to allow service providers time to make the necessary application for permission from PhonepayPlus, and to make any necessary changes to their systems and procedures in light of the enhanced consumer protection requirements.

Service providers who make the necessary application within 4 weeks from the date of the Prior Permissions Notice being published can continue to provide Television PRS services while their application is considered. Service providers who apply after 4 weeks has elapsed are at risk of being found in breach if they continue to operate Television PRS.

We will continue to keep PRS used in Television under review, especially over the coming weeks and months. This includes random monitoring to ensure compliance with the PhonepayPlus Code of Practice and individual conditions in permission certificates.

Appendix

List of Respondents

Responses were received from the following:

Broadcasters and production companies

Optimistic Media	Ostrich Media
YooMedia	GMTV
GCap Media	Virgin Media Television
Sit-Up channels	Emap radio
Five	GMG Radio
Sky	Endemol (<i>Confidential response</i>)
Channel 4	ITV (<i>Confidential responses</i>)
Chrysalis Radio	BBC
Siren	

Service providers

Intext Media
Harvest Media
Mobile Interactive Group (*Part Confidential response*)
MX Telecom
iTouch
BBC Audiocall

Networks

BT (including BT Agile Media)
PNC Telecom
Thus
Mobile Broadband Group (Vodafone, 3, O2, T-Mobile, Orange and Virgin Mobile)

Trade bodies and others

NOC
Redwood Technologies
PRA
Radio Centre