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STATUTORY INSTRUMENTS

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**2000 No. 1712**

**TELECOMMUNICATIONS**

The Telecommunications (Licence Modification)  
(Regional Public Access Mobile Radio  
Operator Licences) Regulations 2000

<i>Made</i>	- - - -	<i>28th June 2000</i>
<i>Laid before Parliament</i>		<i>30th June 2000</i>
<i>Coming into force</i>	- -	<i>21st July 2000</i>

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in respect of measures relating to telecommunications, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Telecommunications (Licence Modification) (Regional Public Access Mobile Radio Operator Licences) Regulations 2000 and shall come into force on 21st July 2000.

**Interpretation**

2. In these Regulations—

“the 1984 Act” means the Telecommunications Act 1984<sup>(3)</sup>;

“the former licences” means the relevant licences in the form they were in immediately before the coming into force of these Regulations;

“the modified licences” means the relevant licences as amended by these Regulations; and

“the relevant licences” means the licences granted by the Secretary of State under section 7 of the 1984 Act to the persons specified in column 1 of Parts A and B of Schedule 1 hereto on the date specified against each person in column 2 thereof.

**Modification of the relevant licences**

3. The relevant licences are hereby modified as follows:—

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(1) S.I. 1996/266.

(2) 1972 c. 68.

(3) 1984 c. 12, as amended by the Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930). There are other amendments to 1984 c. 12 which are not relevant to these Regulations.

- (a) for the Table of Contents there shall be substituted the Table of Contents set out in Schedule 2 hereto;
- (b) in paragraph 1—
  - (i) the words “for the period specified in paragraph 2” shall be deleted; and
  - (ii) in the case of the licences specified in Part A of Schedule 1 hereto for the words “(each of which is hereinafter referred to as ‘the Applicable System’)” there shall be substituted the words “(‘the Applicable Systems’)”;
- (c) in paragraph 2 for the words after “duration” to the end there shall be substituted the words “in the first instance but, without prejudice to Schedule 2 to this Licence, shall be subject to revocation thereafter on ten years' notice in writing of such revocation and such notice shall accordingly not be given before the end of the fifteenth year after the granting of the Licence.”;
- (d) in the case of the licences specified in Part A of Schedule 1 hereto, for paragraphs 3 to 6 inclusive there shall be substituted the following paragraphs—

*“Interpretation*

3. The Interpretation Act 1978 shall apply for the purposes of interpreting this Licence as if it were an Act of Parliament. In this Licence, except as hereinafter provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this Licence, headings and titles shall be disregarded.

4. In this Licence, ‘Licence’ means a licence granted or having effect as if granted under section 7 of the Act.

5. For the purposes of this Licence the ‘Applicable Systems’ means any or all of the telecommunication systems run by the Licensee under this Licence unless the context otherwise requires.

6. Where this Licence provides for any power of the Secretary of State or the Director to give any direction, notice or consent or make any specification, or of the Director to make any designation or determination, it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or give or make again any such direction, notice, consent, specification, designation or determination; and any reference however expressed to the Director making any determination or giving any direction or consent about any matter shall be construed as making such determination or giving such direction or consent after consultation with the Licensee and where appropriate with any other person who may have a relevant interest in the matter to which the determination, direction or consent relates.

7. Any notification which is required to be given under this Licence by the Secretary of State or the Director shall be satisfied by serving the document by post on the Licensee at the Licensee’s registered office.”;

- (e) in the case of the licences specified in Part B of Schedule 1 hereto, for paragraph 6 there shall be substituted paragraph 6 as set out in sub-paragraph (d) above;
- (f) for Schedule 1 there shall be substituted Schedule 1 as set out in Schedule 3 hereto;
- (g) for Schedule 2 there shall be substituted Schedule 2 as set out in Schedule 4 hereto;
- (h) for Schedule 3 there shall be substituted Schedule 3 as set out in Schedule 5 hereto;
- (i) for Annex A there shall be substituted Annex A as set out in Schedule 6 hereto; and

- (j) in the case of the licences specified in Part A of Schedule 1 hereto, Annex B shall be deleted.

### **Transitional provisions**

4.—(1) So far as anything done or treated as done under or for the purposes of any provision of the former licences could have been done under or for the purposes of the corresponding provision of the modified licences, it shall have effect as if done under or for the purposes of the corresponding provision; and any direction, notice, consent, specification, designation or determination or other decision made or having effect under any provision of the former licences shall be treated for all purposes as made and having effect under the corresponding provision.

(2) Where any period of time specified in a provision of the former licences is current immediately before the coming into force of these Regulations, the corresponding provision of the modified licences shall have effect as if that period of time—

(a) ran from the date or event from which it was running immediately before the coming into force of these Regulations, and

(b) expired whenever it would have expired if the former licences had not been modified;

and any rights, liabilities, obligations or requirements dependent on the beginning, duration or end of such a period as mentioned above shall be under the modified licences as they were or would have been under the former licences.

28th June 2000

*Patricia Hewitt,*  
Minister of State for Small Business and E  
Commerce,  
Department of Trade and Industry

**Status:** This is the original version (as it was originally made). UK  
Statutory Instruments are not carried in their revised form on this site.

## SCHEDULE 1

Regulation 2

**PART A**

Column 1	Column 2
Mercantile Radio Services Ltd	24.07.1992
Zycomm Ltd (formerly known as Zycall Ltd)	24.07.1992

**PART B**

Centronet 3 Limited	07.11.1995
Norweb Communications plc	25.05.1995
R. S. Hill & Sons	14.11.1996
Trunknet Ltd	28.10.1996

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**SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT**

**PART 1:**

**DEFINITIONS AND INTERPRETATION RELATING  
TO THE CONDITIONS IN SCHEDULE 1**

1. In this Schedule unless the context otherwise requires:
  - “Applicable Systems” has the meaning given to it in paragraph 5 of this Licence;
  - “Condition” means a Condition in this Schedule;
  - “Group” means a Parent Undertaking and its subsidiary undertaking or undertakings within the meaning of section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989; and “Licensee’s Group” means a Group in respect of which the Licensee is either a Parent Undertaking or a subsidiary undertaking;
  - “Interested Parties” means those persons (if any), other than the Licensee, with whom, in any particular case, the Director is required or considers it appropriate to consult;
  - “Licence” shall have the meaning it has in paragraph 4 of this Licence;
  - “Major Office” means the Licensee’s registered office and such other offices as the Director, having consulted the Licensee, may direct;
  - “Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;
  - “Metering System” means the totality of all apparatus, data, procedures and activities which the Licensee employs to determine the extent of any telecommunication services provided by means of the Applicable Systems;
  - “Mobile Radio Telecommunication Service” means any telecommunication service consisting in the conveyance of Messages by means of a telecommunication system where every Message that is conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a telecommunication system which is designed or adapted to be capable of being used while in motion;
  - “Operator” means any person running a telecommunication system for the purpose of providing telecommunication services;

“Parent Undertaking” has the same meaning as in section 258 of the Companies Act 1985, as substituted by section 21 of the Companies Act 1989;

“Point of Connection” means a point at which the Applicable Systems and an Operator’s system are connected;

“Relevant Company” means:

- (i) the Licensee; or
- (ii) a Parent Undertaking in relation to the Licensee;

“Service Provider” means any person who is providing Mobile Radio Telecommunication Services to another by means of a telecommunication system lawfully connected to the Applicable Systems, or who is in the business of securing the provision of such services by such means;

“Shares” has the same meaning as in section 259(2) of the Companies Act 1985, as substituted by section 22 of the Companies Act 1989, and the term “Shareholding” is to be construed accordingly;

“Specified Person” means a person specified for the time being by the Director (and who has consented to be so specified) for the purpose of keeping and making available for inspection by the general public a list such as is referred to in Condition 3;

“United Kingdom” includes any area to which the provisions of the Act apply by virtue of section 107; and

“Wireless Telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949.

2. Expressions cognate with those referred to in this Schedule shall be construed accordingly.

3. Any reference in any Condition in this Schedule, however expressed, to the Director notifying the Licensee about any matter, affording the Licensee an opportunity to make representations, taking representations made by the Licensee into account or explaining, or giving reasons for any matter to the Licensee, shall be without prejudice to any obligation of due process or similar obligation which the Director is or may be under by virtue of any rule or principle of law or otherwise.

4. Subject to paragraph 5 below, if the Director is considering whether a determination, direction or consent under any Condition in this Licence is appropriate, he shall notify the Licensee and any Interested Parties of his proposed decision or the options which he is considering, and his reasons, and give them a reasonable opportunity to make representations. On making or refusing a determination or direction or giving or refusing consent, he shall notify the Licensee and Interested Parties of the determination, direction or consent or refusal, as the case may be, and his reasons.

5. Paragraph 4 does not apply in relation to any determination, direction or consent the procedure for which is otherwise set out in this Licence or in or under any enactment.

6. Where the Director makes a determination for the purposes of Part A of Schedule 1, or decides that such a determination shall no longer apply, the procedure shall be as follows:

- (a) the Director shall serve upon the Licensee a notice, with reasons, informing the Licensee that it appears to the Director that the Licensee is or is not an Operator having Market Influence as referred to in Condition 9;
- (b) the notice in sub-paragraph (a) above shall be copied to Interested Parties at the same time as being served upon the Licensee;
- (c) the Licensee and Interested Parties shall be given a period of not less than 28 days in which to make representations;
- (d) the representations made by the Licensee or Interested Parties, or both, shall be published in such manner as the Director considers appropriate to bring such representations to the

- attention of the Licensee and Interested Parties (having regard to the wish of the Licensee or any Interested Party to keep matters contained in any representation confidential);
- (e) the Licensee and Interested Parties shall be given a further period of not less than 28 days in which to make any observations on the representations which have been published;
  - (f) when the Director has considered the representations and any observations made, he shall prepare a draft decision and statement of reasons for that decision and send it to the Licensee, and any Interested Party who has submitted representations or observations, or both, giving those persons a period of not less than 14 days within which to comment; and
  - (g) after considering any comments received, the Director shall inform the Licensee of his decision, with reasons, and publish such decision in the same manner he published the representations referred to in paragraph 6(d) above.

## **PART 2: GENERAL CONDITIONS**

### **Condition 1**

#### **PRIVACY, CONFIDENTIALITY AND METERING ARRANGEMENTS**

**1.1.** Subject to the other provisions of this Licence, the Licensee shall take all reasonable steps to safeguard the privacy and confidentiality of:

- (a) any Message conveyed for a consideration by means of the Applicable Systems; and
- (b) any information acquired by the Licensee in relation to such conveyance.

**1.2.** The Licensee shall take all reasonable steps to ensure the accuracy and reliability of any Metering System used in connection with the Applicable Systems and shall, in relation to any Metering System, keep such records as the Director has specified and notified to the Licensee.

### **Condition 2**

#### **ALTERATIONS TO THE APPLICABLE SYSTEMS**

**2.1.** The Licensee shall from time to time inform the Director and provide him with such additional information as he may reasonably require about any proposals for changes to the Applicable Systems or to any apparatus comprised therein or to any stored commands or protocol, which the Licensee might reasonably anticipate from the facts known to it would, or might when made, have the effect of requiring any person:

- (a) running any system which is authorised to be run under a Licence which authorises connection of that system to the Applicable System; or
- (b) producing or supplying telecommunication apparatus or telecommunication systems for connection to the Applicable Systems without being comprised in them,

materially to modify, or, as the case may be, to replace or cease to produce or supply, any item of telecommunication apparatus connected or to be connected to the Applicable Systems.

**2.2.** The Licensee shall prepare and publish in consultation with the Director not later than six months after the date on which this Licence enters into force a statement of its procedures for consulting, and giving advance notice to, those persons likely to be affected by such changes

(including in particular the British Standards Institution and any person appointed by the Secretary of State under section 25 of the Act) and shall adhere to those procedures.

**2.3.** In this Condition:

“to modify” in relation to any Other Apparatus or System means to make any alteration to that Other Apparatus or System which may be necessary to ensure that any Message which has been or is to be conveyed by means of the Applicable Systems connected or to be connected to that Other Apparatus or System is capable of being properly conveyed by that Other Apparatus or System or by the Applicable Systems as the case may be; and

“Other Apparatus or System” means any telecommunication apparatus or telecommunication system together with any protocol, message format or stored command in such apparatus or system connected or to be connected to but not comprised in the Applicable Systems.

### **Condition 3**

#### **RESTRICTIONS ON ADVERTISING**

**3.1.** Where the Licensee sends and conveys Messages on its own behalf, or on behalf of any member of the Licensee’s Group, by means of the Applicable Systems for the purposes of the advertising, the offering for supply or provision or the supply or provision of goods, services or any other thing, and receives from any end user who runs a telecommunication system by means of which that person receives such Messages a request to cease so sending them to a telecommunication system run by that person, then:

- (a) the Licensee shall, and shall ensure insofar as possible that every member of the Licensee’s Group shall, cease sending such Messages to any telecommunication system run by that person and identified for the purpose to the Licensee by reference to a Number which is used to make calls to that telecommunication system; and
- (b) the Licensee shall, or shall procure that a member of the Licensee’s Group shall, maintain, or secure that there is maintained, a record giving particulars of the persons and the Numbers referred to in sub-paragraph 3.1 and shall make that record available for inspection on reasonable notice by the Director.

**3.2.** Where:

- (a) in respect of a telecommunication system run by him or on his behalf, a person has notified a Specified Person that he does not wish to receive unsolicited calls (whether of a general or a particular kind) made for the purpose of the advertising or the offering for supply or provision or the supply or provision of goods, services or any other thing; and
- (b) a Specified Person keeps a list of such notifications in a form specified by the Director and made available for inspection by the general public,

the Licensee shall not, and shall ensure in so far as possible that no member of the Licensee’s Group nor their agent, subcontractor or employee shall, make such unsolicited calls by means of the Applicable Systems to the telecommunication systems so listed.

**3.3.** Paragraph 3.2 shall have effect only where the Director has determined for the time being:

- (a) the description of unsolicited calls to which that paragraph shall apply; and
- (b) the description or descriptions of persons who shall be entitled to notify a Specified Person under that paragraph in relation to any such description of unsolicited calls,

and such determinations are described in a list kept for the purpose by the Director and made available by him for inspection by the general public.



3.4. This Condition shall have no application where the Telecommunications (Data Protection and Privacy) Regulations 1999 (S.I. 1999/2093) apply.

#### **Condition 4**

##### **PREPARATION OF ACCOUNTS**

4.1. The Licensee shall maintain accounting records in such a form that its business of providing the services authorised in Schedule 3 to this Licence is separately identifiable or separately attributable in the books of the Licensee, being records sufficient to show and explain the transaction of that part of the Licensee's business.

#### **Condition 5**

##### **REQUIREMENT TO FURNISH INFORMATION TO THE DIRECTOR**

5.1. Without prejudice to any other provision in this Licence relating to the provision of information, the Licensee shall furnish to the Director, in such manner and at such times as the Director may reasonably request, such information in the form of documents, accounts, estimates, returns and without prejudice to the generality of the foregoing, such other information as he may reasonably require for the purpose of verifying that the Licensee is complying with these Conditions and for statistical purposes.

5.2. In making any such request the Director shall ensure that no undue burden is imposed on the Licensee in procuring and furnishing such information and, in particular, that the Licensee is not required to procure or furnish information which would not normally be available to it unless the Director considers that the particular information is essential for the purposes referred to in paragraph 5.1.

5.3. The Licensee shall permit the Director and any person authorised by him in writing to inspect the Applicable Systems at any reasonable time for the purpose of verifying whether:

- (a) the Licensee is running the Applicable Systems in accordance with this Licence; or
- (b) the connection or the proposed connection of any other telecommunication system to the Applicable Systems causes or would cause any contravention of the Licence under which that other system is run.

5.4. In this Condition "documents" includes, without prejudice to the generality thereof, drawings, designs, plans, or specifications.

#### **Condition 6**

##### **NOTIFICATION OF CHANGES IN SHAREHOLDINGS**

6.1. The Licensee shall notify the Secretary of State if an undertaking becomes a Parent Undertaking in relation to the Licensee.

6.2. Subject to paragraph 6.3, the Licensee shall notify the Secretary of State of:

- (a) any change in the proportion of the Shares held in a Relevant Company by any person; and
- (b) the acquisition of any Shares held in a Relevant Company by a person not already holding any such Shares, and the proportion of any Shares held by that person immediately after that acquisition.

**6.3.** The Licensee shall be obliged to notify the Secretary of State of any acquisition of Shares or change in the Shareholding of a Relevant Company by any person only if, by reason of that acquisition or change, the total number of Shares in that Relevant Company held by that person otherwise than as trustee or nominee for another person together with any Shares held by a nominee or trustee for that person immediately after that change or acquisition:

- (a) exceeds 15 per cent of the total number of Shares in that company (where it did not exceed 15 per cent prior to that change or acquisition);
- (b) exceeds 30 per cent of the total number of Shares in that company (where it did not exceed 30 per cent prior to that change or acquisition); or
- (c) exceeds 50 per cent of the total number of Shares in that company (where it did not exceed 50 per cent prior to that change or acquisition),

provided that where a Relevant Company is a public company as defined in section 1 of the Companies Act 1985, the obligation shall be discharged by forwarding to the Secretary of State as soon as practicable all information in respect of that acquisition or that change as is entered on or received for entry on the register required to be maintained by that Relevant Company under section 211 of the Companies Act 1985.

**6.4.** In any case referred to in paragraph 6.1 or 6.2, notification shall be given by a date which is 30 days prior to the taking effect of such change or acquisition, as the case may be, or as soon as practicable after that date.

## **Condition 7**

### **LICENSEE'S GROUP**

**7.1.** Without prejudice to the Licensee's obligations under these Conditions in respect, in particular, of anything done on its behalf, where;

- (a) the Director determines either:
  - (i) that a member of the Licensee's Group has done something which would, if it had been done by the Licensee, be prohibited or not be authorised under these Conditions; or
  - (ii) that a member of the Licensee's Group has done something which would, if it had been done by the Licensee, require the Licensee to take or refrain from taking a particular action under these Conditions and that neither the Licensee nor the member has met that further requirement; and
- (b) the Director is not satisfied that the Licensee has taken all reasonable steps to prevent any member acting in that way,

then the Director may direct the Licensee to take such steps as the Director deems appropriate for the purpose of remedying the matter, including refraining from carrying on with that member such commercial activities connected with telecommunications as the Director may determine.

**7.2.** Where these Conditions apply in respect of the Applicable Systems they do not apply in respect of any other telecommunication system, whether run by the Licensee or another.

**7.3.** Where any person becomes a member of the Licensee's Group then the Licensee shall not be subject to paragraph 7.1 before that is reasonably practicable but shall be so not later than one year after that person becomes such a member or such later date as the Director may determine.

**7.4.** This Condition shall not apply to any particular member of the Licensee's Group if and to the extent that the Director so determines.

## Condition 8

### PAYMENT OF FEES

**8.1.** Subject to paragraph 8.2 below, the Licensee shall pay the following amounts to the Secretary of State at the times stated:

- (a) on the grant of this Licence the sum of £6,000;
- (b) on 1 April 2000 and annually thereafter a renewal fee of (at the option of the Director) either £3,000 (the subsequent renewal fees being adjusted to take account of any fall or increase in the value of money since that date) or such amount which shall represent a fair proportion, to be determined each year by the Director according to a method that has been disclosed to the Licensee in a written statement, of the estimated costs to be incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other relevant functions under the Act. The first renewal fee shall be increased by the proportion which the period from the date of granting of this Licence until the next following 1 April bears to the period of one year; and
- (c) when the Director so determines, on 1 January 2001 and annually thereafter, a special fee which shall represent a fair proportion, to be determined by the Director according to a method that has been disclosed to the Licensee in a written statement of the amount, if any, by which the aggregate of:
  - (i) the costs estimated to have been already incurred in that fiscal year by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his other relevant functions under the Act;
  - (ii) the costs estimated to have been already incurred in that fiscal year by the Competition Commission following licence modification references under section 13 of the Act; and
  - (iii) the estimated costs to be incurred in the remainder of that fiscal year:
    - (A) by the Director in the regulation and enforcement of telecommunication licences and in the exercise of his relevant other functions under the Act; and
    - (B) by the Competition Commission following licence modification references under section 13 of the Act,exceeds the renewal fee for that year.

**8.2.** The aggregate of the renewal fee and the special fee for any fiscal year shall not exceed:

- (a) 0.08% of the relevant annual turnover attributable to the licensable activities of the Licensee in the United Kingdom (as described in a written statement given to the Licensee by the Director) in the financial year before the last complete financial year of the Licensee before the renewable fee is payable (the “relevant turnover”); or
- (b) £3,000 (adjusted in the manner described in paragraph 8.1(b)),

whichever is the greater (the “normal aggregate fee”), unless the Director determines that the costs incurred in any fiscal year by him and the Competition Commission in respect of the Licensee’s activities exceed the normal aggregate fee, by virtue of the costs of licence modification references under section 13 of the Act, in which case the aggregate of the renewal fee and the special fee for the following year shall be such amount (not exceeding 0.4% of the relevant turnover) as the Director determines is sufficient to take account of that excess as well as the normal aggregate fee.

## **PART A:**

### **DETERMINATION BY THE DIRECTOR OF MARKET INFLUENCE**

#### **Condition 9**

#### **DETERMINATION BY THE DIRECTOR OF MARKET INFLUENCE**

**9.1.** The Director may, in accordance with the procedure set out in paragraph 6 of Part 1 of this Licence, determine the Licensee to be an Operator having market influence in relation to any particular market specified by him where the Licensee has the ability to raise prices above the competitive level in that market for a non-transitory period without losing sales to such a degree to make this unprofitable. In making such a determination, the Director may, in addition to any other factors which appear relevant to him, take into account all or any of the following factors:

- level of entry barriers;
- vertical integration;
- number of active competitors;
- market share;
- extent of countervailing power among buyers;
- the extent of any recent market entry or exit;
- trends in market share and concentration;
- pricing behaviour;
- the level of profits; and
- the influence of other members of the Licensee's Group operating in the same or similar markets which the Director is minded to specify for the purpose of this Condition.

#### **Condition 10**

#### **PROVISION OF MOBILE RADIO TELECOMMUNICATION SERVICES TO SERVICE PROVIDERS**

**10.1.** Where:

- (a) a determination has been made which applies to the Licensee for the purposes of Condition 9 above; and
- (b) the determination under paragraph (a) above is in relation to the provision of Mobile Radio Telecommunication Services;

subject to the following provisions of this Condition, the Licensee shall at the written request of a Service Provider or a person intending to be a Service Provider provide Mobile Radio Telecommunication Services by means of the Applicable Systems to that Service Provider or that person if that Service Provider or that person is able to demonstrate to the reasonable satisfaction of the Licensee that:

- (i) during the most recent year for which published accounts of that Service Provider are available not less than 80 per cent by value of the telecommunication services provided by the Licensee to that Service Provider by means of the Applicable Systems were resold to persons outside that Service Provider's Group; or
- (ii) in the event that no such telecommunication services were provided to that person for resale during that financial year not less than 80% by value of the

telecommunication services to be provided by the Licensee to that person by means of the Applicable Systems during the following financial year will be resold to persons outside that person's Group.

**10.2.** The Licensee shall not be obliged under paragraph 10.1 to provide services to a Service Provider if in the opinion of the Licensee there is reasonable cause to doubt the likelihood (for whatever reason) of that Service Provider:

- (a) providing services to others in a proper and efficient manner; or
- (b) financing the provision of services,

and the Director has not given a written contrary decision.

## **PART B:**

### **UNDUE DISCRIMINATION AND PRICE PUBLICATION REQUIREMENTS WHICH APPLY TO PART A**

#### **Condition 11**

#### **PROHIBITION ON UNDUE PREFERENCE AND UNDUE DISCRIMINATION**

**11.1.** Where a determination has been made which applies to the Licensee for the purposes of Part A of this Licence, the Licensee shall not unduly discriminate or show undue preference in the manner set out below:

- (a) the Licensee shall not (whether in respect of the charges or other terms or conditions applied or otherwise) show undue preference to, or exercise undue discrimination against, particular person or persons of any class or description (in any market) as respects:
  - (i) the provision by means of the Applicable Systems of any telecommunication service provided by the Licensee (including offers of terms on which such services are to be provided) in the market determined by the Director for the purposes of Part A;
  - (ii) the maintenance, adjustment, repair or replacement of any apparatus comprised in the Applicable Systems which is used for the provision of any telecommunication service in the market determined by the Director for the purposes of Part A of this Licence;
- (b) the Licensee may be deemed to have shown such undue preference or to have exercised such undue discrimination if it unfairly favours to a material extent a business carried on by it in relation to the provision of any telecommunication service referred to in paragraph 11.1(a) above so as to place at a significant competitive disadvantage persons competing with that business; and
- (c) any question relating to whether any act done or course of conduct pursued by the Licensee amounts to such undue preference or such undue discrimination shall be determined by the Director, but nothing done in any manner by the Licensee shall be regarded as undue preference or undue discrimination if and to the extent that the Licensee is required or permitted to do such thing in that manner by or under any provision of this Licence.

## Condition 12

### PUBLICATION OF CHARGES, TERMS AND CONDITIONS

**12.1.** Where a determination has been made which applies to the Licensee for the purposes of Part A of this Licence, the Licensee shall, except in so far as the Director may otherwise consent in writing, publish prices and act in the manner set out below.

**12.2.** Within 28 days after the date the Director has made a determination which applies to the Licensee for the purposes of Part A, the Licensee shall send to the Director a notice specifying, or specifying the method that is to be adopted, for determining the charges, terms and conditions on which it offers to:

- (a) provide each description of telecommunication service in the market determined by the Director for the purposes of Part A;
- (b) maintain, adjust, repair or replace any apparatus comprised in the Applicable Systems which is used for the provision of any telecommunication service in the market specified by the Director pursuant to Part A of this Licence where that Part applies to the Licensee.

**12.3.** The Licensee shall provide the services referred to in paragraph 12.2 above at the charges, terms and conditions so published, and shall not depart therefrom except in the circumstances set out in paragraph 12.4 below.

**12.4.** The Licensee shall send to the Director:

- (a) a notice of any amendment to any charge, term or condition, or method of determining the same, referred to in the notice described in paragraph 12.2 above; and
- (b) a notice specifying, or specifying the method that is to be adopted, for determining the charges, terms and conditions on which it offers to provide each description of telecommunication service in the market specified by the Director for the purposes of Part A, which is materially different from any telecommunication service to which the notice under paragraph 12.2 above refers,

not less than 1 day before the amendment referred to in sub-paragraph 12.4(a) above is to come into effect, or the Licensee first provides the telecommunication service referred to in sub-paragraph 12.4(b) above.

**12.5.** The Licensee shall, as soon as practicable after sending to the Director each notice referred to in paragraphs 12.2 and 12.4 above, place a copy of such notice in a publicly accessible part of every Major Office of the Licensee in such manner and in such place that is readily available for inspection free of charge by members of the general public during such hours as the Secretary of State may by order prescribe that the register of Licences and final and provisional orders is to be open for public inspection under section 19(4) of the Act, or in the absence of any such order having been made by the Secretary of State, during normal office hours.

**12.6.** The Licensee shall send a copy of any notice referred to in paragraphs 12.2 and 12.4 above to any person at that person's request (or such parts which have been requested).

## **PART C:**

### **EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1**

#### **Condition 13**

##### **EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1**

**13.1.** Unless the context otherwise requires, the Licensee's obligations have effect subject to the following exceptions and limitations.

**13.2.** The Licensee is not obliged to do anything which is not practicable.

**13.3.** The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under these Conditions if and to the extent that the Licensee is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment owing to circumstances beyond the control of the Licensee, by the act of any national authority, local authority or international organisation or as the result of fire, flood, explosion, accident, emergency, riot or war.

**13.4.** The Licensee shall not be obliged to connect, or to keep connected to the Applicable Systems, or to permit to be so connected or kept connected any telecommunication system or telecommunication apparatus or to provide any telecommunication services or to permit the provision of any service if the person to or for whom that is done or is to be done:

- (a) has not entered or will not enter into a contract for the purpose with the Licensee for reasons other than the unreasonable refusal of the Licensee to agree terms for the purpose but this paragraph does not apply in a case where the Director is satisfied that:
  - (i) the Licensee has not published standard terms and conditions which it proposes to apply for the purpose in question, or the transaction is not fit to be governed by such terms and conditions; and
  - (ii) the Licensee has unreasonably refused to agree terms and conditions for this purpose;
- (b) is, or in the Director's opinion has given reasonable cause to believe that he may become:
  - (i) in breach of a contract with the Licensee for the provision of telecommunication services by the Licensee; or
  - (ii) in default in regard to any debt or liability owed to the Licensee in respect of any such contract;
- (c) is using, or permitting the use of, apparatus so connected for any illegal purpose or has done so in the past and is likely to do so again; or
- (d) has obtained, or attempted to obtain any telecommunication service from the Licensee by corrupt, dishonest or illegal means at any time.

**13.5.** Nothing in these Conditions shall prevent the Licensee from withdrawing from, or declining to provide to, any person any telecommunication service which the Licensee has notified the Director that it is providing in a limited area, or to a limited class of customers, for the purpose of evaluating the technical feasibility of, or the commercial prospects for, that service.

**13.6.** Nothing in these Conditions shall require the Licensee to provide any telecommunication service, or to provide any telecommunication service of any particular class or description, if it provides instead a service, or a service of a class or description which satisfies the purposes of that requirement at least to the same extent.

**13.7.** This Condition shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any other Condition.

- 13.8.** Only paragraphs 13.1, 13.2, 13.3 and 13.7 apply to:  
Condition 5 (Requirement to Furnish Information to the Director);  
Condition 7 (Licensee's Group);  
Condition 8 (Payment of fees).

#### **SCHEDULE 4**

Regulation 3(g)

#### **SCHEDULE 2: REVOCATION**

**1.** Notwithstanding paragraph 2 of the Licence the Secretary of State may at any time revoke this Licence by at least 30 days' notice given to the Licensee in writing in any of the following circumstances:

- (a) if the Licensee agrees in writing with the Secretary of State that this Licence should be revoked;
- (b) if either:
  - (i) an undertaking has become a Parent Undertaking in relation to the Licensee; or
  - (ii) a change or acquisition of a description specified in paragraphs 6.2 and 6.3 of Condition 6 of Schedule 1 to this Licence has taken place;  
and either:
    - (iii) the Licensee has duly notified the Secretary of State in accordance with those paragraphs; or
    - (iv) the Licensee has failed to notify the Secretary of State that such event, change or acquisition has taken place in accordance with an obligation under that Condition;
    - (v) the Secretary of State has notified the Licensee in writing that he is minded to revoke this Licence on the grounds either that:
      - (A) the event, change or acquisition would in his opinion be against the interests of national security or relations with the government of a country or territory outside the United Kingdom; or
      - (B) the Licensee has committed a breach of Condition 6 of Schedule 1; and
    - (vi) the event, change or acquisition has not been reversed or remedied within 30 days of the receipt by the Licensee of such notification;
- (c) if, following a change or acquisition of the type referred to in Condition 6 of Schedule 1 to this Licence, the Secretary of State considers, or the Director has notified the Secretary of State that the Director considers, that the Licensee is relying, has relied, or is likely to rely on this Licence in circumstances in which an effect of such reliance is, was or may be that the Licensee or any member of the Licensee's Group is or was relieved wholly or in part of any obligation, limitation or restriction imposed by a Licence issued to the Licensee or any member of the Licensee's Group;
- (d) where the Licensee has failed to comply with a final order (or a provisional order confirmed) under section 16 of the Act and the Secretary of State has given the Licensee not less than 30 days' notice in writing that, if the Licensee fails to comply with the order within that period of 30 days, he intends to revoke the Licence, provided that no such notice of intention shall be given where the question of the validity of the order is the subject of any court proceedings and where that question becomes so subject during the 30 day notice period, that period shall cease to run until the final disposal of those proceedings (including any Appeal);



- (e) if the Licensee:
    - (i) is deemed to be unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986 as applied for the purposes of this Licence by paragraph 2(b)), convenes any meeting with its creditors generally with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of its creditors generally;
    - (ii) enters into administration, receivership or liquidation;
    - (iii) ceases to provide telecommunication services of the type authorised in paragraph 3 of Schedule 3 to this Licence;
  - (f) if the Licensee or any other person takes any action for the voluntary winding-up or dissolution of the Licensee;
  - (g) if the Licensee enters into any scheme of arrangement under the Insolvency Act 1986 (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Secretary of State);
  - (h) if an administrator, receiver, trustee or similar officer of the Licensee, or of all or any material part of the revenues and assets of it, is appointed;
  - (i) if any order is made for the compulsory winding-up or dissolution of the Licensee; or
  - (j) if any amount payable under Condition 8 of Schedule 1 is unpaid 30 days after it becomes due and remains unpaid for a period of 14 days after the Secretary of State notifies the Licensee that the payment is overdue.
2. For the purposes of paragraph 1(e)(i) in applying section 123 of the Insolvency Act 1986:
- (a) if a written demand served on the Licensee is satisfied prior to the expiry of the notice of revocation the Secretary of State shall not revoke the Licence; and
  - (b) the figure of “£750”, or such other money sum as may be specified from time to time pursuant to sections 123(3) and 416 of the Insolvency Act 1986, shall be deemed to be replaced by “£250,000” or such higher figure as the Director may from time to time determine.
3. In this Schedule:
- (a) “Group” means a Parent Undertaking and its subsidiary undertaking or undertakings within the meaning of section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989; and “Licensee’s Group” means a Group in respect of which the Licensee is either a Parent Undertaking or a subsidiary undertaking; and
  - (b) “Parent Undertaking” has the same meaning as in section 258 of the Companies Act 1985 as substituted by section 21 of the Companies Act 1989.
4. For the purposes of this Schedule “Appeal” includes further appeal and application for leave to appeal or further to appeal.

**SCHEDULE 5**

Regulation 3(h)

**“SCHEDULE 3**

**AUTHORISATION TO CONNECT OTHER TELECOMMUNICATIONS SYSTEMS  
AND APPARATUS TO THE APPLICABLE SYSTEMS AND TO PROVIDE  
TELECOMMUNICATION SERVICES BY MEANS OF THE APPLICABLE SYSTEMS**

1. Nothing in this Licence removes any need to obtain any other licence that may be required under any other enactment.

**Connection authorisation**

2. Subject to paragraph 1, this Licence authorises the connection to the Applicable Systems of:
- (a) any telecommunication system run under a Licence;
  - (b) any telecommunication system run by the Crown;
  - (c) telecommunication apparatus of every description comprised in a telecommunication system mentioned in paragraphs 2(a) and 2(b);
  - (d) any telecommunication apparatus not comprised in the Applicable Systems which is for the time being Compliant Terminal Equipment or approved for connection to the Applicable Systems in accordance with section 22 of the Act; and
  - (e) any hearing aid.

**Service authorisation**

3. Subject to paragraph 1, and as specified below, this Licence authorises the provision by means of the Applicable Systems of any telecommunication services except:

- (a) any service which consists in the conveyance by means of the Applicable Systems of Messages comprising any one or more of the services specified in paragraphs (a) to (cc) of section 72(2) of the Broadcasting Act 1990 for simultaneous reception in two or more Dwelling-Houses where either:
  - (i) the only Applicable Systems by means of which such service is conveyed are situated within a Single Building, a single Dwelling House or in an Adjacent pair of Dwelling-Houses; or
  - (ii) the Applicable Systems by means of which the Messages comprising the service are conveyed and the particular telecommunication service fall within the descriptions of both the systems the running of which is authorised, and the services authorised to be provided by means of those systems, by:
    - (A) the licence granted on 31st December 1990 entitled “Class Licence to Run Community Television Relay Systems”; or
    - (B) the licence granted on 18th October 1997 entitled “Class Licence to Run Broadcast Relay Systems Carrying Terrestrial Channels Only”; or
    - (C) the licence granted on 10th June 1991 entitled “Class Licence to Run Broadcast Relay Systems Covering No More Than One Thousand Homes For The Provision Of All Types Of Broadcast Service”;
- (b) Conditional Access Services:
  - (i) provided or intended to be provided to another person; or
  - (ii) provided for the Licensee’s own use if it provides any Conditional Access Services to another person by means of telecommunication systems run under another

- licence but which could also come within the description of the Applicable Systems authorised to be run by this Licence;
- (c) services consisting in the conveyance of messages by means of an International Simple Resale Bearer Circuit; and
  - (d) Access Control Services:
    - (i) provided or intended to be provided to another person; or
    - (ii) provided for the Licensee's own use.

#### **Definitions and Interpretation**

**4.** In this Schedule unless the context otherwise requires:

“Access Control Services” means those telecommunication services which are:

- (i) telecommunication services other than:
  - (a) Conditional Access Services; or
  - (b) Network Services,provided to a person providing telecommunication services under a Licence, by means of which the supply to end-users of a Relevant Other Telecommunication Service of any description may be controlled; and
- (ii) described in paragraph 4 of Schedule 3 to the Licence entitled “Class Licence for the Running of Telecommunication Systems for the Provision of Access Control Services” granted by the Secretary of State under section 7 of the Telecommunication Act 1984 on 27th August 1999 or any successor thereto;

“Adjacent” means sharing a common wall;

“Applicable Terminal Equipment” means apparatus which is applicable terminal equipment within the meaning of regulation 4 of the Terminal Equipment Regulations or regulation 2(1)(c) of the RTTE Regulations;

“Compliant Terminal Equipment” means Applicable Terminal Equipment which at the time of being placed on the market within the European Community (“the applicable time”) satisfied the requirements of regulation 8 of the Terminal Equipment Regulations or met the appropriate essential requirements of regulation 4 of the RTTE Regulations and either—

- (i) has not subsequently been modified so as to cease to satisfy or (as the case may be) meet those requirements as they were at the applicable time, or
- (ii) has subsequently been so modified but in such a way that it satisfied or (as the case may be) met those requirements as they were at the time of modification;

“Conditional Access Services” means telecommunication services (including services which are treated as telecommunication services pursuant to regulation 8(2) of and paragraph 1(b) of Schedule 1 to the Advanced Television Services Regulations 1996 (S.I. [1996/3151](#)):

- (i) by means of which access to Digital Television Services may be controlled so that only those viewers who are authorised to receive such services do so; and
- (ii) fall within the definition of “Conditional Access Services” given in paragraph 4(b) of the licence entitled “Class Licence for the Running of Telecommunication Systems for the Provision of Conditional Access Services” granted by the Secretary of State under Section 7 of the Telecommunications Act 1984 on 7 January 1997 or any successor thereto;

“Digital Television Services” has the same meaning as in Directive [95/47/EC](#) of the European Parliament and the Council of 24 October 1995 on the use of standards for the transmission of television signals;

“Dwelling House” has the same meaning as in section 202 of the Broadcasting Act 1990;

“International Simple Resale Bearer Circuit” means a communication facility which is:

- (i) comprised both in a public telecommunication system and in an equivalent telecommunication system in a country or territory other than the United Kingdom;
- (ii) for the conveyance of Messages between:
  - (a) in the case of outbound Messages, the last point of connection within the United Kingdom at which the route of the Messages is selected and the first point of connection in any country or territory other than the United Kingdom;
  - (b) in the case of inbound Messages, the last point of connection in any country or territory other than the United Kingdom and the first point of connection in the United Kingdom at which the route of the Messages is selected;
- (iii) made available to a particular Service Provider;
- (iv) such that all of the Messages transmitted at any of the points mentioned in sub-paragraph (ii) above are received at every other such point;
- (v) such that all the points mentioned in sub-paragraph (ii) above are points of connection between telecommunication systems referred to in sub-paragraph (i) above and other telecommunication systems; and
- (vi) such that all the points mentioned in sub-paragraph (ii) above are fixed by the way in which the facility is installed and cannot otherwise be selected by persons or telecommunication apparatus sending Messages by means of that facility; but
- (vii) excluding from the extent of the facility any Private Leased Circuit installed between the particular Service Provider and any other person in the United Kingdom;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;

“Network Service” means any of the following:

- (i) a service consisting only of functions which enable end-users to send, receive, or both, Messages to or from one or more end-users, including functions which enable the establishment of a prior connection between such end-users;
- (ii) a service which consists only of functions which could not practically be provided to any end-user in identical form by anyone other than the Licensee, because those functions are dependent upon the functions referred to in sub-paragraph (i) above;
- (iii) any service which has been agreed by the Licensee and the Director;

“Private Leased Circuit” means a communication facility which is:

- (i) provided by means of one or more public telecommunication systems;
- (ii) for the conveyance of Messages between points, all of which are points of connection between telecommunication systems referred to in sub-paragraph (i) above and other telecommunication systems;
- (iii) made available to a particular person or particular persons;
- (iv) such that all of the Messages transmitted at any of the points mentioned in sub-paragraph (i) above are received at every other such point; and
- (v) such that the points mentioned in sub-paragraph (ii) above are fixed by the way in which the facility is installed and cannot otherwise be selected by persons or telecommunication apparatus sending Messages by means of that facility;

“RTTE Regulations” means the Radio Equipment and Telecommunication Terminal Equipment Regulations 2000;

“Relevant Other Telecommunication Services” means telecommunication services, whether supplied by the Licensee or any other party, but not including:

- (i) any of the services specified in section 72(2)(a) to (f) of the Broadcasting Act 1990 other than licensable programme services specified in section 46(1) of that Act which are conveyed for reception at different times in response to requests made by different users of the service;
- (ii) Digital Television Services; or
- (iii) Network Services;

“Service Provider” means any person who is the business of providing telecommunication services of any description;

“Single Building” means a single building access to all regularly inhabited part of which can be gained from one entrance; and

“Terminal Equipment Regulations” means the Telecommunications Terminal Equipment Regulations 1992 (S.I.1992/2423).

5. Expressions cognate with those contained in this Schedule shall be construed accordingly.”

## SCHEDULE 6

Regulation 3(i)

### ANNEX A

#### THE APPLICABLE SYSTEMS

1. The Applicable Systems are telecommunication systems of every description within the Licensed Area provided that a system (“the System”) is an Applicable System only to the extent that it satisfies each of the following conditions:

- (a) the System is one by means of which Messages are conveyed or are to be conveyed:
  - (i) from one Network Termination Point to another such Point;
  - (ii) from a Network Termination Point to another place which is neither a Network Termination Point nor a Call Office or from such a place to such a Point;
  - (iii) between a place which is neither a Network Termination Point nor a Call Office and another such place where their conveyance is not by way of provision of a service to another person; or
  - (iv) between a Call Office and any other place;but in any case not beyond a Network Termination Point;
- (b) none of the apparatus comprised in the System is Relevant Terminal Apparatus installed on premises occupied by a person to whom there are provided telecommunication services by means of the System.

2. In this Annex:

“Approved Apparatus” means in relation to any system apparatus approved under section 22 of the Act or which meets the appropriate essential requirements of regulation 4 of the RTTE Regulations;

“Call Office” means telecommunication apparatus not supplied by the Licensee to any particular person but made available for use by the public or a class of the public;

“Message” means anything falling within paragraph (a) to (d) of section 4(1) of the Act;

“Network Connecting Apparatus” means telecommunication apparatus comprised in the Applicable Systems which is not Network Termination and Testing Apparatus and is connected to another telecommunication system;

“Network Termination and Testing Apparatus” means an item of telecommunication apparatus comprised in the Applicable Systems installed in a fixed position on Served Premises which enables:

- (i) Approved Apparatus to be readily connected to, and disconnected from, the Applicable Systems;
- (ii) the conveyance of Messages between such Apparatus and the Applicable Systems; and
- (iii) the due functioning of the Applicable Systems to be tested,

but the only other functions of which, if any, are:

- (a) to supply energy between such Apparatus and the Applicable Systems;
- (b) to protect the safety or security of the operation of the Applicable Systems; or
- (c) to enable other operations exclusively related to the running of the Applicable Systems to be performed or the due functioning of any system to which the Applicable Systems are or are to be connected to be tested (separately or together with the Applicable Systems);

“Network Termination Point” means:

- (i) within an item of Network Connecting Apparatus at which energy in any of the forms specified in section 4(1) of the Act is conveyed directly to or from apparatus comprised in a telecommunication system other than one in which that Network Connecting Apparatus is comprised; or
- (ii) within an item of Network Termination and Testing Apparatus at which such energy is conveyed directly to any Relevant Terminal Apparatus;
- (iii) which in the case of a radio based telecommunication system, is the last point at which Messages are transmitted or the first point at which Messages are received in the form of electromagnetic signals, by apparatus run by a person other than the Licensee and lawfully connected to that System;

“RTTE Regulations” means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000;

“Relevant Terminal Apparatus” means:

- (i) “Terminal Apparatus”, that is to say any telecommunication apparatus installed on Served Premises except a Call Office; and
- (ii) any other telecommunication apparatus connected to the apparatus referred to in subparagraph (i) above constituting a system run under a licence by the person using that Terminal Apparatus; and

“Served Premises” means a single set of premises in single occupation where apparatus has been installed for the purpose of the provision of telecommunication services by means of the Applicable Systems at those premises.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the telecommunications licences granted to the licensees specified in Schedule 1 for the provision in certain areas specified in each licence of telecommunication services consisting in the conveyance by means of telecommunication systems of messages using wireless telegraphy. The Schedules to the licences are replaced by the Schedules set out in the Regulations. The amendments are being made to these licences as part of the implementation in the United Kingdom of Directive [97/13/EC](#) of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications (O.J. No. L199, 26.7.97, p.32), which requires that conditions in all telecommunications licences of a similar type should be harmonised, except where objectively justified in particular instances.

A Regulatory Impact Assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS.

The licences modified by these Regulations may be inspected at the Library of the Office of Telecommunications (OFTEL), 50 Ludgate Hill, London EC4M 7JJ.