

## **A guide to the new regulatory framework for service providers**

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## Introduction

Some members of the service provider sector, especially those who do not run systems, may be worried by the impact that regulation will have on their businesses when the new EU regulatory framework and Communications Bill enter into force, later in 2003. This Guide is one part of Oftel's programme to explain the new framework to stakeholders and also to offer reassurance to service providers that although the legal basis of regulation is undergoing sweeping changes there will be a broad continuity in the actual practice of regulation.

The Communications Bill makes it clear, in describing Ofcom's general duties, that "regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed". The Bill also lays stress on promoting the "development and use of effective forms of self-regulation". Given that few members of the Service Provider sector are likely to enjoy significant market power (which the Bill equates to dominance) in a specified market their experience under the new framework, with its General Condition of Entitlement, is unlikely to differ very markedly from what they already know about.

In order to make this Guide more helpful, it will be updated where necessary and supplemented by case studies explaining how the new regulatory framework will impact on specific sectors, such as internet Service Providers, airtime providers and voice telephony resellers. Where useful explanations have been given to specific concerns these will be anonymised and listed in the FAQ section found at [http://www.oftel.gov.uk/publications/eu\\_directives/2003/spfaq0303.htm](http://www.oftel.gov.uk/publications/eu_directives/2003/spfaq0303.htm).

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## **Foreword**

This guide offers service providers a simple introduction to the key features of the new regulatory framework that will be coming into force in 2003. It seeks to explain some of the major concepts and terms of the new Directives and the Communications Bill and how they may impact on service providers. Although it is intended to be helpful by offering interpretations of certain legal terms these are only guidelines and in the case of any dispute resolution neither Ofcom nor Oftel would be bound by the contents of this guide. This guide should not be used as a substitute for independent legal advice.

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## Chapter 1

### What is the new regulatory framework?

1.1 The basis for the new regulatory framework is five major new EU Communications Directives which are intended to converge and harmonise communication regulation throughout the community. The five directives are:

- Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities (the Access Directive);
- Directive 2002/20/EC on the authorisation of electronic communications networks and services (the Authorisation Directive);
- Directive 2002/21/EC on a common regulatory framework for electronic communications networks and services (the Framework Directive);
- Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services (the Universal Service Directive) and;
- Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector (the Privacy Directive).

1.2 The Framework Directive provides the overall structure for the new regulatory regime and sets out fundamental rules and objectives which read across all the new directives. As its name suggests, it is the directive that establishes the new framework. The Authorisation Directive establishes a new system whereby any person will be generally authorised to provide communications services and/or networks without prior approval. The general authorisation replaces the existing licensing regime. The Universal Service Directive defines a basic set of services that must be provided to end-users. The Access and Interconnection Directive sets out the terms on which providers may access each others' networks and services with a view to providing publicly available electronic communications services. Finally the Privacy Directive establishes users' rights with regard to the privacy of their communications.

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## Chapter 2

### What are the key features of the new regulatory framework?

2.1 The driver for the new regulatory framework has been the growing convergence of telecommunications, Internet-based and broadcasting services. Increasingly, it no longer makes sense to have separate rules for different forms of communication that are coming together. All these spheres are gathered together in the new regulatory concept of electronic communications which embraces the conveyance of signals by any form of electrical, magnetic or electro-magnetic energy. Services such as interactive television, electronic programme guides, email, SMS as well as traditional telephony are all brought under the same regulatory umbrella. The new framework is intended to be technology-neutral and more able to adapt to what will continue to be a technologically dynamic sector.

2.2 More importantly for service providers, the new framework takes account of a convergence of provision, in parallel with technological convergence. It has been customary to think of the generality of providers as falling into distinct categories, such as operators, air-time providers, internet service providers, systemless service providers, etc. The new framework aims at simplicity by recognising only two fundamental types of providers: providers of electronic communications networks (ECNs) and providers of electronic communications services (ECSs). Additionally, the new framework also recognises providers of associated facilities, a term defined in the annex to this guide.

2.3 The key feature of an ECN is that it is a transmission system for the conveyance of signals. The key feature of an ECS is that it is a service consisting in the conveyance of signals. The definitions of ECN and ECS are interlocking: the signals conveyed by an ECS are conveyed by means an ECN; an ECN is the platform by which an ECS is provided. An important point to notice is that the provision of an ECS does not extend to the provision of content services or most information society services, (ie services provided over ECNs at individual request) although providing the underlying transmission over which such a service is conveyed may well involve the provision of an ECS. For a more extended analysis of these terms see the *Draft guidelines for the interconnection of public electronic communications networks* published at [www.oftel.gov.uk/publications/eu\\_directives/2002/intg0902.htm](http://www.oftel.gov.uk/publications/eu_directives/2002/intg0902.htm).

2.4 Some providers will provide both networks and services; others will either provide a network or a service but not both. But for the purposes of the new framework they will all be known as (electronic) communications providers.

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## Chapter 3

### **How will the new regulatory framework be implemented?**

3.1 Four of the new directives must be implemented in the UK by 25 July 2003. The fifth, the Communications Data Protection Directive, must be implemented by 31 October 2003. The major legal instrument for implementation of the directives is the Communications Bill which will also establish the functions and duties of the new communications regulator, the Office of Communications (Ofcom). The Bill, which was laid before Parliament on 19 November 2002 is available at [www.communicationsbill.gov.uk](http://www.communicationsbill.gov.uk) but may be subject to change as it proceeds through Parliament.

3.2 It is possible that an interim implementation regime will be needed for the period from 25 July 2003 until the relevant provisions of the Communications Bill come into full effect. This would be based on regulations made under the European Communities Act, which would lapse once the Bill is in force. Effectively, the new framework will be in place from July 2003.

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## Chapter 4

### From licensing to general authorisation

4.1 A key change of the new framework is that the telecommunications licensing regime will disappear – communications providers will no longer be required to obtain a licence in advance of operating a telecommunication system or providing telecommunications services. The licensing regime will be replaced by a general authorisation to provide electronic communications networks or services under which communications providers may be subject to a number of general conditions, for which see section 6 below.

4.2 Because the current system of individual and class licences requires a specific legal entitlement to be granted prior to the provision of a network or service it is inconsistent with the principle of a general authorisation. The current licensing regime has to be repealed and replaced with the new authorisation regime on 25 July 2003. From this date, all licences will be revoked. Neither individual nor class licences granted under the Telecommunications Act 1984 will have any legal force. Some of the consequences that flow from the abolition of telecommunication licences are:

- distinctions between different classes of licence (eg ‘public telecommunication operator’ or ‘PTO’ as opposed to ‘telecommunications services licence’ or ‘TSL’) will no longer apply;
- it will no longer be necessary to link the provision of a communication service to an ‘Applicable System’ – an electronic communications service can be provided over any electronic communications network (be it fixed, mobile, cable etc.); and
- all conditions which have been imposed on network and service providers to date via their licences will be repealed in their current form and replaced by general conditions pursuant to the Communications Act.

4.3 Currently, service providers will either have an individual operating licence, or operate under a class licence such as the Telecommunications Services Licence (the TSL) or, if they are systemless service providers, have no licence at all. Telecommunications **systems** were the central building block of the 1984 Act - the fulcrum on which telecommunications regulation pivoted was the legal obligation for **all telecommunications systems**, even residential telephones, to be licensed. The corollary was that providers without systems were not regulated. However this idea was being eroded long before the Communications Bill was published. The 1998 Telecommunications (Open Network Provision) (Voice Telephony) Regulations, implementing the Revised Voice Telephony Directive (98/10/EC), attached requirements to systemless service providers which were defined as providers of publicly available telephone services which were not running a telecommunication system.

4.4 For many varieties of service providers the new framework promises a lighter and more straightforward regulatory regime. Positives are: one set of general rules applying to all providers, the freedom to offer services without prior authorisation, the

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freedom to operate beyond the limitations imposed by the TSL such as the '20 single sets of premises' rule, the 'five kilometre' rule and the exclusion of mobile radio equipment. Moreover as the new framework extends across the European Union it should become easier for UK providers to offer networks and services within the Community.

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## Chapter 5

### The General Authorisation and service providers

5.1 The General Authorisation will include a number of general conditions applying to providers as appropriate. These conditions, which focus primarily on consumer protection issues, have been published and consulted upon at [www.oftel.gov.uk/publications/licensing/2002/enti0502.htm](http://www.oftel.gov.uk/publications/licensing/2002/enti0502.htm) The consultation document offers a more detailed account that is merely summarised in this guide.

5.2 Under the Authorisation Directive, communications providers may only be subject to a maximum set of conditions as set out in the Authorisation Directive. In addition to the general conditions, communications providers may also be subject to specific conditions. Such conditions can only be imposed on individual communications providers as a result of:

- a significant market power (SMP) designation;
- a Universal Service designation;
- the provision of conditional access services, or;
- the provider's control of access to end-users.

The specific conditions are set out in the other directives as appropriate and are not dealt with in this guide.

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## Chapter 6

### Analysis of general conditions

6.1 Being an integral part of the general authorisation, the general conditions apply across the board to all providers of networks and services, but not to providers of associated facilities. However, because the specific measure imposed by a general condition will derive from the nature of the network or service provided, in practice service providers will only be subject to a limited set of the complete general conditions.

6.2 It is possible to group the general conditions according to which type of network or service provider they apply to. In the case of providers of electronic communications networks, the conditions distinguish between two types of providers: those who provide Public Electronic Communications Networks (PECNs) and those who provide Public Telephone Networks (PTNs). The obligations on PTN providers are more onerous because a PTN is defined as an electronic communications network over which Publicly Available Telephone Services (PATS) are provided. It is widely accepted that telephony, as a core service providing access to the emergency services, should be more heavily regulated than other ECSs.

6.3 In the case of providers of electronic communications services, the two principal forms of service recognised by the conditions are PATS and public electronic communication services (PECS). Distinctions are made in the general conditions as to whether a PATS service is provided at a fixed location or whether public pay telephone services are provided. In the case of PECS, distinctions are made where service is offered to residential or small business end-users or where the underlying network is used by a significant number of end-users to receive TV or radio broadcasts. The distinctions between types of network and service providers are derived from and reflect those made by the new directives.

6.4 Furthermore, specialised service providers are identified: those who provide public pay telephone services, or controlled premium rate services, or who use automatic calling equipment.

6.5 The tables that follows sets out how the general conditions apply these various distinctions to the providers of networks and services. However it must be emphasised that they are based on the draft version of the general conditions on which Oftel consulted in May 2002. These may be subject to change, both as regards their number and their nature.

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**Table 1– the general conditions and who they apply to**

<b>#</b>	<b>General Condition</b>	<b>Provider</b>
1	Access and interconnection obligations	Public Electronic Communications Network (PECN) providers
2	Standardisation and specified interfaces	all providers
3	Proper ... functioning of the network	Public Telephone Network (PTN) and/or Publicly Available Telephone Services (PATS) providers
4	Emergency call numbers	PTN and/or PATS providers
5	Use during disasters	PTN and/or PATS providers
6	Public pay telephones	Public Pay Telephone providers
7	Must-carry obligations	providers of ECNs over which Public Electronic Communication Services (PECS) are provided where the ECN is used by a significant number of end-users to receive broadcast programmes
8	Operator assistance, directories and DQs	PATS providers other than Public Pay Telephone providers
9	Requirement to offer contracts	PECS providers
10	Transparency/publication ...	providers providing end-users with access to and use of PATS excluding public pay telephones
11	Quality of service	PECS providers
12	Metering and billing	PECS providers
13	Itemised bills	PATS providers
14	Non-payment of bills	PATS providers at a fixed location
15	CoPs and dispute resolution	PECS providers to domestic and small businesses
16	Controlled PRS	controlled Premium Rate Services (PRS) providers or ECS providers providing to controlled PRS providers
17	Use of automatic calling equipment	providers automatically initiating voice and/or fax calls
18	Measures for end-users with disabilities	PATS providers
19	Provision of additional facilities	PTN providers
20	Allocation ... of telephone numbers	all providers
21	Number portability	all providers (at the request of PATS providers)
22	Provision of directory information	all providers (at the request of PATS providers)
23	Non-geographic numbers	all providers

**Table 2 – types of providers and the conditions that apply to them**

<b>provider</b>	<b>typical examples</b>	<b>general conditions</b>
all providers	any electronic communications network or service	2, 20, 23
all providers (at the request of PATS providers)	any electronic communications network or service	21, 22,
<b>network providers</b>	*	*
PECN providers	networks over which publicly available voice and/or data services are available (eg voice telephony, internet access)	1, 2
PTN providers	networks over which fixed or mobile telephony services are available	3, 4, 5, 19
PECN providers (where the network is used by a significant number of end-users to receive broadcast programmes)	satellite or cable TV networks	7
<b>service providers</b>	*	*
PECS providers	any type of electronic service (eg text messaging, internet access, voice telephony)	9, 11, 12
PECS providers to residential and small business end-users	any type of electronic service (eg text messaging, internet access, voice telephony) provided to domestic end-users or undertakings with 50 or fewer workers	15
PATS providers	fixed and mobile voice telephony services by means of which an end-user might reasonably expect to access the emergency services	3, 4, 5, 13, 18,
PATS providers at a fixed location	fixed voice telephony services	14
providers providing end-user access to PATS (except public pay	fixed and mobile voice telephony services by means of which an end-	10

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telephone providers)	user might reasonably expect to access the emergency services	
PATS providers (except public pay telephone providers)	fixed and mobile voice telephony services by means of which an end-user might reasonably expect to access the emergency services	8
public pay telephone providers	public call boxes available to the general public	6
controlled PRS providers and ECS providers providing to controlled PRS providers	premium rate services (eg chatlines) subject to the ICSTIS Code	16
providers automatically initiating voice and/or fax calls	outgoing call services used by (eg) call centres	17

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## Chapter 7

### Enforcement powers

7.1 The Communications Bill gives Ofcom powers to enforce the general conditions. The procedure envisaged is that Ofcom would notify a provider who appears to be in contravention of any condition, allowing a specified period of time (usually one month) to allow the provider to make representations, to comply with the condition and to remedy the consequences of the contravention. After the specified period has elapsed, Ofcom has the authority to issue an enforcement notice on the notified provider if it is still in contravention, which will require the provider to comply with the condition and/or to remedy the consequences of the contravention. Ultimately, where a provider fails to comply with an enforcement notice, Ofcom may impose a penalty which has to be appropriate and proportionate and may not exceed 10 per cent of turnover of the provider's relevant business for the relevant period. For serious and repeated contravention and where penalties have failed to secure compliance, Ofcom may suspend or restrict a communications provider's entitlement to provide networks, services or associated facilities.

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## Chapter 8

### Notification requirements

8.1 Under the new regulatory framework, it would be contrary to Community rules for a National Regulatory Authority (NRA), such as Ofcom, to require communications providers to obtain any form of prior authorisation in advance of providing networks, services or associated facilities. However it is permissible to require providers to notify Ofcom of their intention to provide such services.

8.2 The Communications Bill enables Ofcom to designate certain classes of networks, services or associated facilities as requiring notification. It is important to note that a notification is not the same as an application. Having given a notification a provider may lawfully make networks or services available which will not be conditional on receiving a formal response from Ofcom.

8.3 Moreover, only a very limited amount of information is required to be included in the notification. Essentially, this consists of particulars to identify the person giving the notification plus a short description of what is intended to be provided and when. Additionally, Ofcom may require details of persons in the UK who can be contacted in case of an emergency.

8.4 Oftel is proposing to consult on its detailed proposals for notification arrangements shortly. However, Oftel's present thinking is that no communication providers will be required to notify in advance of providing networks or services.

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## Chapter 9

### Administrative charges

9.1 Under the Communications Bill, Ofcom will be empowered to require providers of designated electronic communications networks, electronic communications services and associated facilities to pay a yearly administrative charge. The charge is intended to meet the annual cost to Ofcom of carrying out its functions and will replace the licence fees currently payable. As a very rough indication, Oftel's estimated administration costs for 2000-01 were just under £12m, although Ofcom will be a larger organisation than Oftel carrying out a broader range of functions and drawing revenues from a wider range of companies.

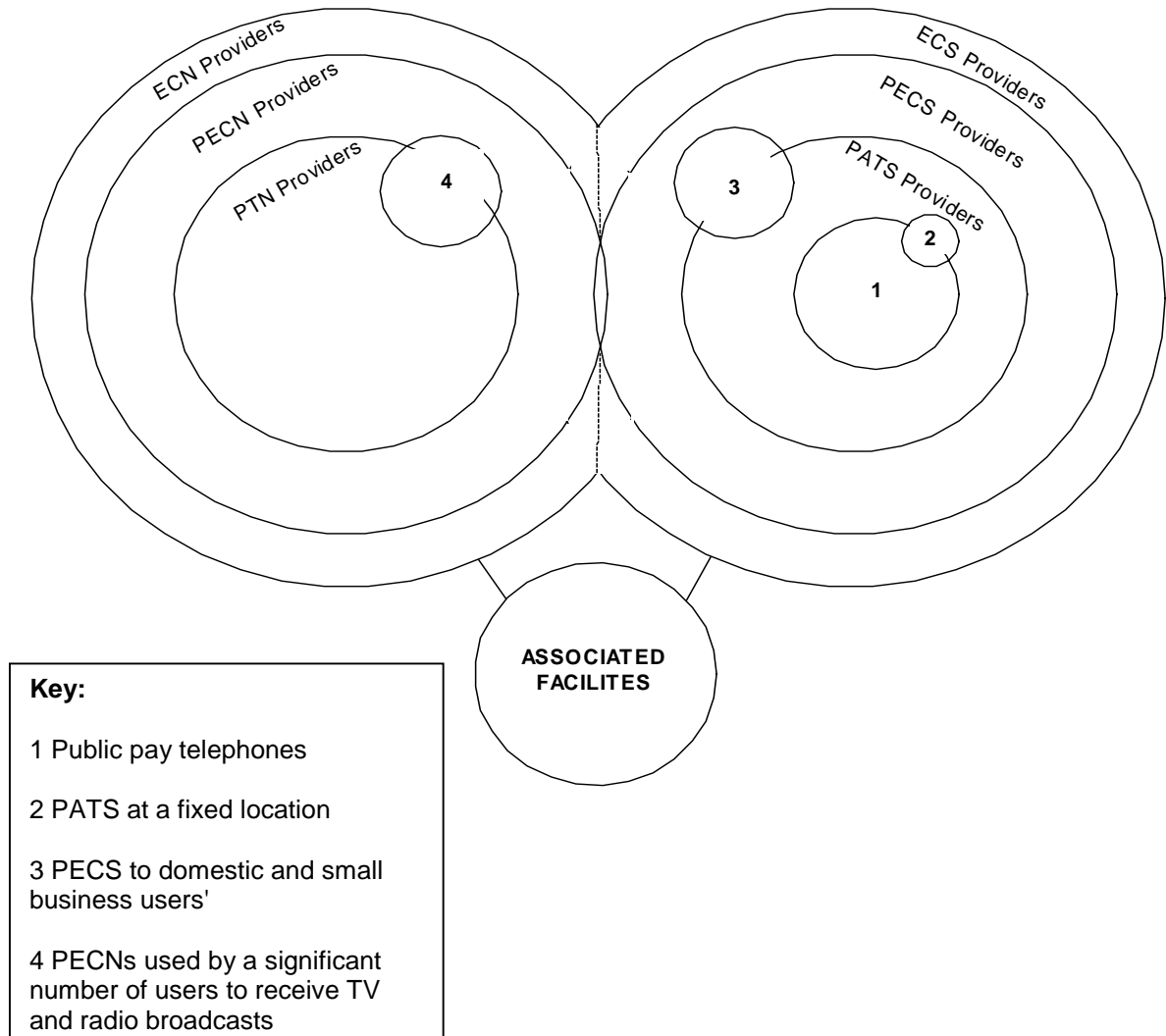
9.2 Oftel is proposing to consult on its detailed proposals for levying administrative charges shortly.

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## Annex A

### The different types of communications providers



A.1 The diagram is intended to provide a graphic representation of the various types of communications providers mentioned in this guide. The two largest circles represent electronic communications networks and electronic communications services. The inner circles represent subsets of these two types of provision. They indicate, for example, that a public telephone network (PTN) is a particular type of electronic communication network and that publicly available telephone services (PATS) represent a particular type of electronic communication service. Where a 'satellite' circle crosses a boundary line it indicates that instances of the particular type of network or service identified can theoretically be provided on either side of the line. For example, some, but not all, PATS services provided at a fixed location will also be public pay telephones.

A.2 Providers will be subject to those conditions that apply to their particular category but also to conditions that apply to the types of network or service of which theirs is a subset. For example, PATS providers are additionally subject to those conditions that apply to PECS providers, although the converse is not true.

A.3 The two largest circles intersect because an integrated undertaking may provide both electronic communications networks **and** electronic communications services.

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## Annex B

### Definitions

**Act** – means the Communications Act 2003.

**Associated Facility** – means a facility which:

- (a) is available for use in association with the use of an electronic communications network or electronic communications service (whether or not one provided by the person making the facility available); and
- (b) is so available for the purpose of -
  - (i) making the provision of that network or service possible;
  - (ii) making possible the provision of other services provided by means of that network or service; or
  - (iii) supporting the provision of such other services;

**Communications Provider** – means a person who ... provides an electronic communications network or electronic communications service.

**Consumer Panel** – means the body of persons established by Ofcom pursuant to section 15 of the Act.

**Customers** –in relation to a communications provider or a person who makes an associated facility available, means the following (including any of them whose use or potential use of the network, service or facility is for the purposes of, or in connection with, a business):

- (a) the persons to whom the network, service or facility is provided or made available in the course of any business carried on as such by the provider or person who makes it available;
- (b) the persons to whom the communications provider or person making the facility available is seeking to secure that the network, service or facility is so provided or made available;
- (c) the persons who wish to be so provided with the network or service, or to have the facility so made available, or who are likely to seek to become persons to whom the network, service or facility is so provided or made available;

**Electronic Communication** – means a communication for transmission by means of an electronic communications network.

**Electronic Communications Network**– means:

- (a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and
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- (b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals-
- (i) apparatus comprised in the system;
  - (ii) apparatus used for the switching or routing of the signals; and
  - (iii) software and stored data.

**Electronic Communications Service** – means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

**End-user** –, in relation to a public electronic communications service, means-

- (a) a person who, otherwise than as a communications provider is a customer of the provider of that service;
- (b) a person who makes use of the service otherwise than as a communications provider; or
- (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service.

**Ofcom** – means the Office of Communications.

**Public Electronic Communications Network** – means an electronic communications network provided wholly or mainly for the purpose of making electronic communications services available to members of the public.

**Public Electronic Communications Services** – means any electronic communications service that is provided so as to be available for use by members of the public.

**\*Public Pay Telephone** – means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes.

**\*Publicly Available Telephone Service** – means a service available to the public for originating and receiving national and international telephone calls and access to Emergency Organisations through a Telephone Number or Numbers in the National Telephone Numbering Plan or an international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for end-users with disabilities or with special social needs and/or the provision of non-geographic services.

**\*Public Telephone Network** – means an electronic communications network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data.

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**Signal** –includes:

- (a) anything comprising speech, music, sounds, visual images or communications or data of any description; and
- (b) signals serving for the impartation of anything between persons, between a person and a thing or between things, or for the actuation or control of apparatus.

**\*Subscriber** – means any natural or legal person or legal entity who or which is party to a contract with the provider of Public Electronic Communications Services for the supply of such Services.

**Note:** *these definitions are taken from the Communications Bill as introduced in the House of Commons on 19 November 2002 apart from those denoted by an asterisk which are derived from the draft General Conditions. These definitions may be subject to change as the Bill proceeds through Parliament.*

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