

Implementation of the Authorisation Directive's provisions on notifications and fees

A statement issued by the Director General of
Telecommunications

21 May 2003

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Summary

S1 This Statement follows a consultation¹ by the Director General of Telecommunications ('the Director') on the implementation of the EC Authorisation Directive's² provisions on notification and fees. In that consultation proposals were made for the collection of licence fees for the period 1 April – 24 July 2003 ('the First Period') and for the collection of administrative charges for the period 25 July 2003- 31 March 2004 ('the Second Period'). The Director also indicated that he was minded not to introduce a process of advance notification relating to the provision of electronic communications networks ('ECNs'), electronic communications services ('ECSs') and the making available of associated facilities ('AFs') under Clause 30 of the Communications Bill. A statement was issued by the Director on the 25 March 2003 in relation to the collection of fees for the First Period (available at www.oftel.gov.uk/publications/licensing/2003/statfees0303.htm). This Statement concerns the collection of administrative charges for the Second Period and sets out the Director's decision on a notification procedure.

S2 For the reasons set out in this document the Director has decided as follows:

Notification

- not to implement a notification procedure for the time being;
- to rely on information already in his possession or which he will acquire through ongoing monitoring of the industry or from the publicly available databases that OfTel and the Radiocommunications Agency maintains to identify who are providers of ECNs, ECSs and persons making available AFs;

Administrative charges during the Second Period

- administrative charges will be payable by the providers of ECNs, ECSs and persons making available AFs with a turnover from relevant activities of £5 million or above;
- to abolish the fixed fee of £3000;
- not to specify a list of relevant activities in the charging principles but to publish guidance on the definition of relevant activity;
- to continue with the use of turnover bands;
- to use gross turnover figures as opposed to 'net value' turnover in the calculation of the charge;
- to maintain a cap of 0.08% on the amount of turnover that can be levied as an administrative charge;

¹ Available at www.oftel.gov.uk/publications/licensing/2003/fees0203.htm

² Directive 2002/20 EC of 7th March 2002 on the authorisation of electronic communications networks and services ('Authorisation Directive')

- to publish on the Oftel web site a list of persons subject to the payment of administrative charges; and
- to give notice in this Statement and by way of publication in the Gazettes and on Oftel's web site of the Director's intention to publish a general demand for information as soon as possible after 25 July 2003.

S3 The Director is considering whether terrestrial broadcasters may in addition to the provider of the ECN be providing an ECS solely in respect to the transmission of content services over an ECN. If the Director does decide that these broadcast transmission providers are providing ECSs then they may be subject to administrative charging in respect of the provision of these services.

Chapter 1

Introduction

1.1 This chapter sets out the background to proposals of the Director General of Telecommunications ('the Director') in relation to the advance notification procedure and administrative charging and sets out the next steps for the calculation and collection of the administrative charge for the period 25 July 2003 – 31 March 2004 ('the Second Period'). Chapter 2 contains a summary of the responses to the consultation and the reasons for the Director's decisions. Chapter 3 describes in more detail the process for the calculation and collection of the administrative charge.

The new EU regime

1.2 The implementation of four EC Directives on the 25 July 2003³ will change fundamentally the way in which the communications sector is regulated, to reflect the growing convergence between technologies and to promote competition in the provision of electronic communication services for the benefit of consumers. Of relevance here is the Framework Directive which provides the overall structure for the new regulatory regime and sets out the fundamental rules and objectives which read across all the new directives in particular the Authorisation Directive.

1.3 The Authorisation Directive establishes a new system whereby persons providing electronic communication networks ('ECNs'), electronic communication services ('ECSs') and making available associated facilities ('AFs') will be able to do so under 'general authorisation' without the need to obtain prior approval. The general authorisation replaces the existing licensing regime for telecommunication system operators. However Article 3 allows Member States to require undertakings to submit an advance notification before exercising rights stemming from the general authorisation. In addition Article 12 allows for administrative charges to be levied to cover the costs of the regulatory authority.

1.4 The Government has decided that a new regulatory body should be responsible for administering the new regime and as a result the Office of Communications ('Ofcom') has been established to take over the responsibilities of Oftel and four other regulatory authorities.⁴ The costs of funding Oftel and then

³ Directive 2002/21 EC of 7 March 2002 on a common regulatory framework for electronic communications networks and services ('Framework Directive')

Directive 2002/19 EC of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('Access Directive')

Directive 2002/22 EC of 7 March 2002 on universal service and user's rights relating to electronic communications networks and services ('Universal Service Directive')

Directive 2002/20 EC of 7th March 2002 on the authorisation of electronic communication networks and services ('Authorisation Directive')

⁴ The four regulatory authorities are the Independent Television Commission, the Radio Authority, the Radiocommunications Agency and the Broadcasting Standards Commission.

Ofcom under the new regime, will continue to be collected from the industry. However new policy and procedures will need to be put in place to enable the collection of these administrative charges.

Implementation

1.5 Parliament is now considering the Communications Bill (the latest version as introduced into the House of Lords on 5 March 2003 is available at www.communicationsbill.gov.uk)⁵ and amongst other things it will implement the four EC Directives. It is intended for the Bill to receive Royal Assent in time for it to enter into force by the 25 July 2003. However in the event that this is not possible the implementation of the EC Directives will be achieved through Statutory Instruments⁶ for an interim period until the Bill enters into force.

1.6 Even if the Communications Bill does receive Royal Assent in time for it to enter into force by 25 July 2003 it is expected that Ofcom will not be ready by then to assume all of its duties as foreseen by the Bill. Should that be the case the Communications Bill allows Ofcom's functions to be carried out by the Director for a transitional period. For these reasons this document refers to the Director rather than Ofcom. It is expected that when Ofcom takes over the Director's functions it will, at least in the short term, adopt the decisions made in this Statement. Ofcom would of course need to consult if any changes were proposed.

1.7 Of relevance here are the provisions in the Bill relating to an advance notification procedure (Clauses 30- 34) and the fixing of administrative charges (Clauses 35 - 40) which implement Articles 3 and 12 of the Authorisation Directive. There are corresponding provisions in the draft Electronic Communications (Networks and Services) Regulations ('the Regulations') regarding administrative charging, but nothing regarding advance notification due to the Director's intention not to put in place an advance notification procedure (see below).

Notification

1.8 Under Clause 30 of the Communications Bill the Director is permitted to require advance notification from those providing ECNs, ECSs and making available Afs. In addition such providers can be obliged to provide basic information including particulars of the person giving the notification. The Director is not obliged to implement a notification procedure and under clause 6 of the Communications Bill he is under a duty not to impose unnecessary burdens. In the consultation document the Director proposed not to implement a notification procedure and to rely on information gathering powers to identify those persons who should be subject to administrative charging.

⁵References to the Communications Bill in the rest of the document are references to this version.

⁶ The draft Statutory Instruments are available at www.communicationsbill.gov.uk/implementation_consultations.html

Administrative charges

1.9 Clause 35 of the Communications Bill allows for the fixing of administrative charges for the providers of ECNs and ECSs and those making available AFs. In the consultation the Director proposed to calculate administrative charges in a similar way to licence fees with some changes to reflect the new regime. The main change being that instead of basing the charge on total turnover from licensable activities of individual licensees it would be based on total turnover from relevant activities of all the persons subject to the general authorisation and who meet the relevant turnover threshold.

1.10 The consultation did not deal with the wider question of how Ofcom as a whole will pay for itself. That question will need to be addressed in due course by Ofcom.

1.11 In line with the Communications Bill, the Director's proposals were appraised against the following objectives:

- the requirement that charges are applied and collected through a non-discriminatory and transparent procedure;
- that charges are imposed which are proportionate and objectively justifiable;
- the system has to be both practicable and reasonable for the Director's purposes; and
- finally, the charges that are payable need to be sufficient to enable the Director to carry out his functions satisfactorily while at the same time avoiding unnecessary burdens on the industry.

Next Steps

1.12 *Charging Principles*. Under Clause 35(3) of the Communications Bill before fixing the administrative charge for the charging year the Director must publish charging principles. As a result of the consultation the Director has decided that he will implement the charging principles set out at Annex A. There are some differences between what was proposed in the consultation and what appears in those principles. First rather than define a list of relevant activities, the Director has decided to define 'relevant activity' by general reference to the provision of public ECSs to end users, the provision of ECNs and ECSs and network access to communications providers (as defined in clause 398 of the Communications Bill⁷) and the making available of Afs to communication providers. This is in line

⁷ Communication provider in the Bill means a person who (within the meaning of clause 29(4) of the Communications Bill) provides an electronic communications network or an electronic communications service

with the definition of 'relevant activity' in the Regulations⁸ which have been consulted on by the Secretary of State for Trade and Industry. Second the Director has clarified in the charging principles which turnover figure he will use in any charging year to calculate the charge i.e. the turnover from relevant activities in the person's financial year ending in the charging year immediately prior to the charging year before the charging year in question.⁹

1.13 *Relevant Activities.* The Director will issue guidance shortly on the definition of what is a public electronic communication network ('PECN') for the purposes of establishing who has interconnection rights and obligations under the Access Directive. The Director recognises the need to provide more detailed guidance on the definition of 'relevant activity' for the purposes of administrative charging and draft guidance will be published shortly in a consultation document.

1.14 *Designation.* Under clause 35(2) the Director can only charge those providers of ECNs, ESCs and AFs of a description which has been designated. Having considered the responses to this consultation the Director has decided to designate those ECNs, ESCs and AFs where the person providing that network, service, or making that facility available has a total turnover from relevant activities of £5 million or more. The text of a notice of designation, which will be published as soon as possible after the 25 July 2003, is attached at Annex B. The wording of the notice reflects the wording which has been consulted on in the Regulations¹⁰ with some changes to clarify when a person will be designated. Persons will be designated in a particular charging year if their turnover from relevant activities was £5 million or over in their financial year ending in the charging year immediately prior to the charging year before the charging year in question.¹¹

1.15 *Demand for Information.* To obtain the necessary information to calculate the administrative charge for the Second Period the Director will publish as soon as possible after 25 July 2003 a general demand for information under powers which are in clause 132 of the Communications Bill (or corresponding powers in the Regulations). A notice of intention to publish the general demand is at Annex C.

1.16 *Charging for the grant of the Electronic Communications Code.* Oftel is consulting on proposals for charging for the grant and administration of the

⁸ See regulation 8 and Schedule 5 of the draft Electronic Communications (Networks and Services) Regulations. The draft Statutory Instrument is available at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexD.pdf.

⁹The wording of the principles for the first and second charging years will be slightly different to reflect the fact that these years are the first two charging years under the new regime

¹⁰ See Schedule 4 of the draft Electronic Communications (Networks and Services) Regulations

¹¹.The wording of the designation for the first and second charging years will be slightly different to reflect the fact that these years are the first two charging years under the new regime

electronic communications code.¹² A statement on this will be published when the responses to that consultation have been considered.

1.17 Sixteen responses were received to the consultation. Non-confidential responses were received from:

1. Powergen
2. Scottish and Southern Energy plc
3. MBG
4. Association of Communication Service Providers ('ACSP')
5. Alternative Networks Ltd (the figures submitted were marked confidential)
6. Centrica
7. AT&T
8. Innogy plc
9. BT
10. Ntl
11. The Operator's Group (Energis, Opal Telecom, Fibrenet, Thus, Colt, Cable and Wireless)

The following chapter summarises the responses and sets out the Director's conclusions.

¹² See consultation on the grant of the electronic communications code available at www.oftel.gov.uk/publications/Infrastructure/2003/elecode0303.htm. The closing date for responses is the 28 May 2003.

Chapter 2

Responses to the Consultation

Notification

2.1 Implementation of an advance notification procedure would enable the Director to obtain information about the providers of ECNs, ECSs and those making available AFs such as contact names and a description of the service or network to be provided. The Director recognises that some information is needed about such persons for the purposes of fixing the administrative charge and the carrying out of his regulatory functions under the new regime. However the question which was addressed as part of the consultation was whether it is necessary to implement an advance notification procedure. The Director's view was that it is not necessary to implement such a procedure and after consideration of the responses his view has not changed.

Q1 Do respondents agree that the imposition of a notification procedure would be an unnecessary administrative burden?

2.2 The majority of respondents welcomed the proposal and agreed with the Director's proposal that regulatory burdens should not be imposed which are unnecessary. However a few respondents namely ntl, the Operator's Group, AT&T and BT were concerned as to how the Director would know who would be subject to administrative charging in the absence of a notification procedure. It was proposed that a list of persons subject to the charge should be made publicly available in order to make the process transparent, to make the Director accountable, and to prevent payment avoidance. Only BT strongly expressed the view that the only legal way to maintain such a list was through the implementation of a notification procedure. BT was very concerned that the failure to implement a notification procedure would have serious implications for the effectiveness of regulation under the new framework and in particular for the efficient and impartial application of the charging regime and the undertaking of market reviews.

2.3 Three of the respondents thought that the implementation of a notification procedure could be used to compile a list to replace the Annex II list of providers of PECNs.

The Director's response

2.4 The benefit of implementing an advance notification procedure would be that it would enable the collection of information about such persons. However the type of information that can be required under the procedure is of a very basic nature.¹³ The Director will be able to gain information about the providers of ECNs, ECSs and those making available AFs through the exercise of information gathering

¹³ Article 3(3) Authorisation Directive

powers currently contained in clause 132 of the Communications Bill. It is under this clause, for example, that the general demand for information at Annex C will be issued. The purpose of the demand will be to ascertain the total turnover from relevant activities of persons liable to pay the charge. Such information could not be obtained through the implementation of an advance notification procedure.

2.5 Clause 132 allows the Director to require a wide range of information from such persons to enable him to carry out his duties effectively including information to allow him to identify markets and carry out market analysis in accordance with or for the purposes of any provision of Chapter 1 of the Communications Bill. Similar powers are already available to the Director under the current licensing regime and they have been used effectively to gather information to support policy and decision making. The Director acknowledges that save in the case of administrative charging where he can issue a general demand for information he would need to know the identity of the person from whom information was required in order to serve a notice of a demand for information. However he is of the view that he will be able to ascertain the identity of the providers of ECNs, ECSs and AFs to enable him to carry out his functions effectively because of the following:-

2.5.1 Many persons subject to the general authorisation will already be known to the Director because they will have been regulated under the current licensing regime. This applies also to many providers of ECSs such as companies who are reselling services provided over another company's network and would include Internet service providers, indirect access providers and mobile service providers. Although currently these resellers are unlicensed or are operating under class licences certain Regulations¹⁴ apply to unlicensed providers and those persons operating under class licences are subject to the conditions attaching to those class licences.

2.5.2 The Director is already in possession of a large amount of information about the industry through Oftel's monitoring of commercial and industrial trends for example by scanning the trade and financial press and company announcements for information about new companies, size of existing companies and performance. This monitoring is an ongoing process and will continue under the new regime.

2.5.3 Further information will be available from:-

- the Specified Numbering Scheme, available at www.oftel.gov.uk/ind_info/numbering.sns1199.htm which lists the public telephone numbers against the names of the operators to whom they have been allocated (such a list will continue to be maintained under the new regime¹⁵);

¹⁴ Telecommunications Open Network Provision (Voice Telephony) Regulations 1998

¹⁵ Under Clause 53(3) of the Communications Bill the Director must keep such day to day records as he considers appropriate of the telephone numbers allocated by him in accordance with the National Telephone Numbering Plan.

- the awards made of the public competition for radio spectrum to the public mobile operators and the radio fixed access operators and which are available on the Radiocommunications Agency's web site at www.radio.gov.uk; ¹⁶ and
- the publicly available register¹⁷ which will need to be maintained of all those providers of ECNs who have been granted code powers;
- the list that the Director has decided to maintain of the names of persons who have responded to the general demand for information for the purposes of calculating the administrative charge (see below).

2.6 For these reasons the Director has decided that it is not necessary to implement an advance notification procedure. However, Ofcom will be able to review this decision in the future and introduce a procedure if it becomes apparent that there is a clear need for one. The Director is sympathetic to the proposal to maintain a list of persons subject to the charge and agrees that it would help demonstrate that all those who should be subject to administrative charging are in fact being charged. He has decided therefore to make such a list available at the same time as the administrative charge is collected. The list would only contain the names of those persons who respond to the general demand for information in Annex C. The Director does not intend to specify any names of persons who fail to pay the charge but this may be introduced by the Director or Ofcom at a later stage.

2.7 Responding to the issue raised by respondents of a need for a list to replace the list of providers falling within the categories set out in Annex II of the Interconnection Directive¹⁸, this issue was addressed as part of Oftel's recent consultation¹⁹ on who will be entitled to interconnection rights and obligations under the EC Access Directive.²⁰ A statement containing guidance on this will be published shortly. The Director recognises the benefits of maintaining a voluntary list of providers of PECNs with interconnection rights and obligations which will be analogous to the Annex II list. It is highly likely that the Director will decide to maintain such a list. Such a list would be a further source of information available to the Director to ascertain who are the providers of ECNs.

¹⁶ Although at present there is no publicly available list of all those operators with wireless telegraphy licences under clause 167 of the Communications Bill it will be possible to make regulations for the establishment and maintenance of a wireless telegraphy register

¹⁷ Clause 105 of the Communications Bill

¹⁸ Directive 97/33/EC on interconnection in telecommunications with regard to ensure universal service and interoperability through application of principles of Open Network Provision

¹⁹ Consultation on draft Guidelines for the interconnection of public electronic communication networks 13th September 2002 available at www.oftel.gov.uk/publications/responses/2002/intg0902/index.htm

²⁰ Directive 2002/19 EC of 7th March 2002 on access to and interconnection of electronic communications networks and associated facilities

Calculation and collection of administrative charges for the Second Period

2.8 Under the licensing regime fees have been collected from individual licensees under the licences granted under section 7 of the Telecommunications Act 1984. An annual fixed fee of £3000 was collected from those individual licensees with a turnover of less than £5 million and a fee based on gross turnover from licensable activities was collected from those individual licensees with a turnover of £5 million or more ('Variable Fees'). The Variable Fees were calculated in accordance with OfTel's Statement on the Revised Licence Fee Regime of August 1999.²¹ The Director is of the view that the system for collecting fees has worked well and complies with the requirements of the Communications Bill and the Authorisation Directive as it allows the imposition of charges which are objectively justifiable and proportionate²². He has decided therefore to continue to calculate administrative charges in the same way as licence fees have been calculated.

Gross Turnover

2.9 In the consultation the Director considered moving away from using gross turnover (which includes income generated from the provision of all services) to 'net value' turnover (which includes only income generated from the provision of 'net value' or 'value added' services) for the calculation of the Variable Fees. Although there was slightly more support in the responses for a move to calculation based on 'net value' turnover as opposed to gross turnover (see below), the Director has not been persuaded of the benefits of moving to 'net value' turnover and remains concerned about how 'net value' turnover would be assessed in practice. He has decided therefore to retain the current method of calculating fees based on gross turnover.

Q2 *Is OfTel right to continue with a system whereby the administrative charging will be based on gross turnover for relevant activities as opposed to net turnover? If respondents support a 'net value' turnover system how would it work?*

2.10 Six of the respondents, including BT, ntl, MBG and AT&T and the Operator's Group, were in favour of the Director continuing to base charging on gross turnover as they considered it to be the most practicable, proportionate and appropriate way of calculating charges. The others (including Alternative Network Limited, Powergen, Scottish and Southern Energy plc, ACSP, Innogy plc and Centrica) were against continuing on gross turnover because they thought it did not meet any of the objectives outlined in paragraph 0 of this Statement. In particular they argued that the gross turnover system discriminates against new entrants, providers of ECSs, and AFs and favours in particular vertically integrated companies such as BT. Moreover they felt that retaining gross turnover would hamper service competition. However Innogy plc and Centrica acknowledged the

²¹ Available at www.oftel.gov.uk/publications/1999/licensing/fees0899.htm

²² Clause 35(4) of the Communications Bill and Article 12(1b) Authorisation Directive

difficulty and impracticalities of measuring 'net value' turnover because it highly depended on accounting principles applied by individual companies.

2.11 Four respondents, Powergen, Innogy plc, Centrica and the ASCP, expressed the view that administrative charges should only be imposed on network providers. Part of the reason for this is that in their view the charges would be passed down the chain to service providers and so the service providers would be indirectly but proportionately charged anyway.

The Director's response

2.12 To exclude service providers from administrative charging would, in the Director's view, discriminate against network providers and therefore would not be acceptable.

2.13 The Director does not consider that there is any discrimination in using gross turnover as opposed to 'net value' turnover. The reason why the Director has been prepared to consider moving to 'net value' turnover was because it was recognised that there was an element of 'double counting' whereby the income received from passing on wholesale costs down a chain of providers would be reflected in the turnover figures of more than one provider. This occurs now under the existing regime, for example, where one provider (A) pays another provider (B) a fee to interconnect to B's network. This fee will be part of the gross income (turnover) of B on which B's contribution to pay the charge is assessed. However A will pass these costs onto its customers and the income it receives will also be included in the calculation of its gross income for the purposes of calculating the charge. Where A's customers are operators rather than end users of the service, the same costs will similarly be passed down the chain. The result is that more than one provider will be including in their gross turnover figure, income derived directly or indirectly from the same activity- i.e. interconnection to the network owned by B.

2.14 The implication for the calculation of the charges is that the gross turnover used to calculate what percentage is needed to pay for the costs of OfTel is larger than would be the case if 'net value' turnover were used. However everyone will pay the same percentage of gross relevant turnover and therefore using this system is not discriminatory. Some minor variations in what an individual provider pays can be justified on the basis that the system of calculation based on gross turnover is simple to administer and does not impose undue accounting responsibilities and additional costs on the persons liable to pay charges.

2.15 The Director recognises that using 'net value' turnover may be more favourable to service providers because the assessment of turnover would then include income derived from the provision of the 'value added' services and would therefore be less than gross turnover. This could result in a service provider ending up in a lower turnover band with the result that it would pay a lower charge. However it could also mean that the burden of paying more of the charge falls on

other type of providers. Network providers might take the view that such a system discriminates against them.

2.16 Changing to 'net value' turnover would not however be straightforward and a number of questions were raised in the consultation concerning how in practice a method using 'net value' turnover would work, including what does net value mean? How is it to be calculated? Does the concept of 'value added' involve some subjective assessment of what value has been added? Unfortunately none of the respondents who were in favour of changing the system provided substantive answers to these questions which convinced the Director that moving to 'net value' turnover would, at present, work in practice.

2.17 Alternative Networks Limited suggested that 'net value' turnover could be calculated by deducting the cost of supplying the relevant activities from the gross relevant turnover. It suggested that the cost of supplying the services would be made up of the wholesale inputs for ECSs and AFs providers, or the initial inputs for ECNs providers, and proportionate operating costs for providing the relevant activities. However no suggestion was made as to how the Director should go about deciding what 'wholesale inputs' should be included or how to work out the proportionate operating costs for providing the relevant activities.

2.18 ACSP suggested that 'value added' turnover could be worked out by calculating the difference between gross relevant turnover and the wholesale inputs purchased from the network operator or service provider, subject to a turnover threshold. Again no suggestion was made as to what 'wholesale inputs' should be included or what 'value added' meant.

2.19 Centrica proposed that if gross turnover is retained service providers should be allowed to retain a rebate on their charges equivalent to their network inputs. Centrica also suggested an alternative which would be to require vertically integrated companies such as BT to include in their final turnover figures income from the provision of services to the different parts of the same organisation. Generally, amongst those asking for a change it was felt that BT should be required to account for income at each main stage of the supply chain like any of the other independent providers. To apply such a requirement throughout the industry would involve a significant increase in regulatory accounting obligations for many of the large and medium sized operators. These processes could vary depending on the particular internal structure a vertically integrated company chooses to adopt. It is doubtful however if this would reduce significantly the degree of double counting which is recognised to exist in both the previous system and the new system for the calculation of the charge. As stated elsewhere in this Statement although double counting does occur it has in practice made little difference to the relative amounts which companies pay. The existing system is easy to understand and operate for everyone including in particular the small operators with few compliance resources.

2.20 Further turnover is a clear measure of the trading activity that takes place between a provider and its customers. Any provider will have a number of choices as to how they meet the requirements of its customers. There will, for example, be the choice between own provision of services (which might be owning and operating some elements of infrastructure) and purchasing the provision of some services from third parties. If the basis for the calculation were to change to 'net value' turnover this would benefit those using the latter option over the former. The use of gross turnover is arguably a more neutral approach.

2.21 The Director therefore remains of the view that changing to 'net value' turnover would not be practicable and he does not believe that adopting a method using 'net value' turnover would meet the objectives for the charging regime outlined in paragraph 0 of this Statement. However Ofcom will be able to reconsider the question again when they begin to collect charges.

Turnover from Relevant Activities

2.22 The majority of respondents requested a clear definition of turnover from relevant activities and clarification of the list of relevant activities. Alternative Networks Limited disagreed with Oftel's proposal to use turnover attributable to relevant activities for the financial year 2 years before the charging year. It argued that turnover from relevant activities should be from the financial year 2 years before its current financial year. BT and MBG argued the use of turnover bands should be abandoned and replaced with a methodology based on actual relevant turnover.

The Director's response

2.23 The Director agrees that there is a need for further clarity about the list of relevant activities. Rather than expanding on the list here, the Director intends to publish guidance to help persons who may be subject to the charge determine for themselves whether an activity is relevant.

2.24 The Director does not consider there is any benefit in changing the turnover requirement from two years before the charging year to two years before the relevant person's current financial year. The present policy recognises that companies have different financial years and that it can be several months from the end of financial year before certified accounts are available. In addition the Director's view is that the proposal has no advantage as it would still be necessary to determine the provider's 'current' financial year. The use of turnover bands was a proposal made by the industry in response to Oftel's consultation 'A Review of Telecommunication Licence fees in the UK' November 1998. The use of turnover bands has proved simple to administer and it makes the system transparent. Changing to a calculation based on actual turnover would increase the amount of time that the regulator would have to spend calculating the charge and this could lead to increased costs. Therefore the Director has decided to retain turnover bands for now.

Abolition of fixed fees

Q3 Do respondents agree with the proposition that the abolition of fixed fees is a measure that would assist smaller providers and further encourage new entrants

2.25 Half the respondents including ACSP, Centrica, Innogy plc, Alternative Networks Limited agreed. However some respondents namely Scottish and Southern Energy plc, MBG, Powergen, BT and ntl were not supportive of the abolition of the fixed fee. This was mainly because they feared that the abolition of the fixed fee would result in material increases in the charges payable by other providers and these respondents believed that it was the small companies and new entrants that generate a disproportionate amount of Oftel's work.

The Director's response

2.26 Under the current licensing regime approximately £300,000 is collected in fixed fees every year. The Director believes that the impact of abolishing the fixed fee on the level of charges for persons who are liable should be minimal because Oftel's administration costs will be paid by a greater number of companies. Further, abolishing the fixed fee will reduce the regulator's costs incurred in calculating and collecting the charge. This change will also help new entrants as approximately half of this income is from such companies. This in turn should help to promote competition. The purpose of administrative charging is to fund the costs of the regulator and it is not focused directly on the amount of time and effort spent by the regulator in regulating a particular provider. Therefore aligning the charges to the costs of regulating certain companies would be very difficult to do and in principle difficult to justify because of the fact that the Director's decisions, even if directly applicable to a certain class of provider, often concern the whole industry.

Costs of the Competition Appeals Tribunal

2.27 MBG and the Operator's Group were concerned about the industry having to pay, through administrative charges, for any costs awarded against the Director by the Competition Appeals Tribunal ('CAT'). The Operator's Group proposed that the Director should only seek to recover costs from those providers responsible for making the reference to the Competition Commission.

The Director's response

2.28 Defending decisions in the CAT will be part of the Director's functions under the new regime and as such he will have the power to recover the costs incurred in dealing with appeals through administrative charging, including any costs which the CAT may decide to award against Oftel. Under clause 190 of the

Communications Bill only price control matters must be referred by the CAT to the Competition Commission.

Supplementary charges and cap on charges

2.30 Energis welcomed the fact that the Director will not raise any supplementary fees during the course of the year. Regarding the proposal to retain the cap on charges MBG was concerned that the cap applied to the charges imposed for the charging year together with the charges imposed as a result of a deficit in income for the previous year. BT asked that the cap should be given 'hard coded' status through an appropriate regulatory instrument. Energis, the Operator's Group and MBG argued that the cap on charges should be reduced from .08% to .0628% of turnover and then reduced every year.

The Director's response

2.31 The Director does not consider that a reduction in the cap level should be made at this stage. This is largely because of uncertainty in the amount of turnover that will be generated by all those subject to administrative charging and because at this stage it is difficult for the Director to predict what Ofcom's resource needs will be. However Ofcom will be able to review the cap when they begin to perform their functions. In future years the Director anticipates that the cap will apply to the level of charges that can be imposed to recover the costs estimate for the charging year which will take account of any deficit or surplus made in the previous charging year.

Chapter 3

Process for the Calculation and Collection of the Administrative Charge

3.1 Following publication of the designation set out at Annex 2 to this Statement (or the coming into force of the Statutory Instruments²³) all providers of ECNs, ECSs and those making available AFs with a turnover from relevant activities ('TRA') of £5 million or more will be designated for the purposes of administrative charging. The Director does not think it would be reasonable to expect such persons to know whether in any particular charging year they will have a TRA which meets the turnover threshold. Therefore he has decided that such persons will be designated for a particular charging year if their TRA was £5 million or more in their financial year ending in the charging year immediately prior to the charging year before the charging year in question. For the first charging year (the Second Period) commencing on 25 July 2003 the relevant period for assessing TRA is the 12 month period (25 July 2001 – 24 July 2002) immediately prior to the 12 month period (25 July 2002-24 July 2003) before the 25 July 2003. So if their financial year ends on 30 September they will look at their TRA in their financial year ending on 30 September 2001 to determine whether or not they have been designated to pay an administrative charge for the Second Period. This is because 30 September 2001 falls in the 12 month period running from the 25 July 2001 – 24 July 2002.

3.2 These charges will be in respect of the network, or service provided or facility made available. Of tel is consulting separately on proposals for calculating charges in respect of the application of the electronic communications code²⁴ and a statement on this will be published when the responses to that consultation have been considered.

Who are the providers of ECNs, ECSs and AFs?

3.3 The definition of ECNs, ECSs and Afs is set out at clause 29 of the Communications Bill. At present, providers of ECNs will either be licensed individually to provide telecommunication systems or be providing their network under a class licence such as the Telecommunications Services Licence. These companies are likely to be providing ECSs to their customers. In addition, there are companies who do not run ECNs but are reselling services provided over another company's network. These resellers, which include some Internet Service Providers, indirect access providers and mobile service providers, are also providers of ECSs. These providers will become liable to pay for the costs of the regulator for the first time.

²³ Referred to in paragraph 1.4 of this Statement

²⁴ The consultation is called 'The granting of the electronic communications code by Of tel' of 2nd April 2003 and is available at www.of tel.gov.uk/publications/Infrastructure/2003/elecode0303.htm

3.4 Companies providing mainly content services over ECNs will not be subject to the administrative charging. For example, a company providing financial services over the Internet will not be a provider of an ECS, as it is mainly providing *content* not conveyance. Similarly, web hosting and the provision of an Internet portal are content services not an ECS. The provision of metered and unmetered access, video conferencing and voice mail will be ECSs. In general broadcasters are suppliers of content services and therefore would not be expected to be subject to administrative charging.

Estimate of costs

3.5 The calculation and collection of the administrative charge can only take place after 25 July 2003. This means that soon after this date Oftel will have to estimate what its costs will be for the Second Period. In future years this estimate will be made at the beginning of the charging year (1 April –31 March). The estimate for the period commencing on the 25 July 2003 will be based on the costs estimate of £19,089,785 given in Oftel's Management Plan for the year 2003-2004²⁵. Part of the costs approximately £5,500,000 are in the process of being collected through licence fees under the old licence fee regime for the period 1 April 2003- 24 July 2003.

Collection of information

3.6 The Director recognises that because it may be several months before the statutory audited accounts are available it would not be practicable to make a request for information about financial performance in the year previous to the charging year. Instead as with the designation information about TRA will be requested for the financial year ending in the charging year immediately prior to the charging year before the charging year in question. For the Second Period (the first charging year) information about TRA will be requested for the financial year ending in the 12 month period immediately prior to the 12 month period before 25 July 2003 (i.e. the 12 month period that ends on 24 July 2002). For the second charging year (commencing on 1 April 2004) information about TRA will be requested for the financial year ending in the 12 month period immediately prior to the commencement of the Second Period (i.e. the 12 month period that ends on 24 July 2003).

3.7 At Annex C is a notice setting out the Director's intention to publish a general demand for information as soon as possible after the 25 July 2003. The notice of intention will also be published separately on the Oftel web site and in the Belfast, Edinburgh and London Gazettes.

3.8 The general demand will ask those liable to pay administrative charges to notify the Director of their TRA for the financial year ending in the period of 12 months ending on 24 July 2002. The notice is being published to provide those

²⁵ Available at www.oftel.gov.uk/publications/about_oftel/2003/manp_2_0303.htm#4

liable to pay the charge with as much time as possible to calculate their TRA. If the Director is to calculate and collect the administrative charge by the 31 March 2004 he will need this information as soon as possible. Therefore the Director will only be able to give six weeks, from the date the demand is published. However the Director considers that this time period is reasonable given the advance notification of the general demand.

3.9 As has been past practice the TRA for the relevant financial year will have to be supported by certification from two directors as well as a copy of an extract of the statutory audited accounts for the relevant period.

3.10 The Director will publish guidance to help those persons who may be liable to pay the charge to assess what turnover should be attributed to relevant activities.

The calculation of the charge

3.11 The Director then calculates the total turnover. For companies with a turnover of over £1 billion, actual TRA is used. For companies with a turnover of under £1 billion the Director uses the lower figure of the turnover band which they fall into. For example if a company reports a total TRA of £670 million the turnover figure used will be £600 million.

3.12 The turnover bands are:

- £750m – below £1bn
- £600m – below £750m
- £500m – below £600m
- £400m – below £500m
- £300m – below £400m
- £200m – below £300m
- £150m – below £200m
- £100m – below £150m
- £75m – below £100m
- £50m – below £75m
- £25m – below £50m
- £10m – below £25m
- £5m – below £10m

3.13 Once the Director is in possession of the total turnover figure he will be able to calculate what percentage of it is needed to cover the estimated costs. This calculation will be carried out in the same way as before. Below is a worked through example. The final figure in the example should not be relied on as any indication of what the actual percentage might be.

3.14 Example

Oftel's costs for the charging year are estimated at £20 million. The total turnover attributable to the relevant activities of those persons liable to pay the charge is £29 billion.

Percentage of turnover needed to cover Oftel's estimated costs = Estimated Costs (£20 million) / Total Turnover (£29 billion) x 100 = 0.068%

3.15 The administrative charge for each person subject to charging will be calculated by multiplying the percentage i.e. 0.068% by the lower figure of the turnover band which each person falls into. For companies with a turnover of over £1 billion actual TRA will be used.

Dealing with a deficit or surplus in income

3.16 By the end of the Second Period, Ofcom is expected to be functioning. Therefore as soon as is reasonably practicable after the 31 March 2004 Ofcom will have responsibility to publish a statement. This statement must set out the aggregate amount of charges that have been received, the aggregate amount of charges that remain outstanding and are likely to be paid or recovered, and the actual cost incurred by them and Oftel in the previous charging year. Any deficit or surplus in income will be carried forward and taken into account by Ofcom to determine the estimate of costs for the following charging year. This deficit could include the loss of income arising as a result of the Director being unable to recover a charge because, for example, a company had gone into liquidation and inadequate provision had been made in the provision for bad debts.

Cap on charges

3.17 The charge will be capped at 0.08% of the lower figure of the applicable turnover band or actual TRA (whichever applies). The cap will apply to the whole of the charge, which may include a charge for any deficit which is carried forward from the previous charging year. If the cap in any one year is not reached i.e. by 1 per cent then that 1 per cent will not automatically be rolled forward to increase the cap level in the following year.

The Objectives in the Communications Bill

3.18 The Director is satisfied that the method described above for calculating and collecting the administrative charge meets the objectives outlined in paragraph 0 of the Statement.

Procedure which is non- discriminatory and transparent

3.19 The procedure is non-discriminatory because charges will be applied to all persons subject to the general authorisation who meet the turnover threshold level

on a pre-determined level and published formula. It is transparent because the method and principles are known to all through the publication of this Statement and the prior publication of the charging principles which will take place as soon as possible after 25 July 2003.

Imposition of charges which are proportionate and objectively justifiable

3.20 The charges will be proportionate because they are based on TRA. They are objectively justifiable because they will be levied to cover the costs of the Director in carrying out his regulatory functions and they will only be calculated and levied in respect of the provision of ECNs, ECSs and the making available of Afs.

Practicable and Reasonable

3.21 The method is very similar to the method used by the Director to calculate licence fees under the Licensing Directive (the predecessor to the Authorisation Directive). This method has proved relatively simple to administer and reasonable to apply.

Sufficient

3.22 The method allows for any deficit in income to be collected in the following charging year. Therefore the overall charges, subject to the cap, should be sufficient to allow the Director to recover his costs so that he can carry out his functions satisfactorily.

Penalties

3.23 Under Clause 39 of the Communications Bill the Director will have the power to impose a penalty not exceeding twice the amount of the applicable administrative charge for failure to pay such a charge. Where there is serious and repeated contravention of the requirement to pay administrative charges, the Director may direct a suspension or restriction of the general authorisation for a particular person provided all the requirements of Clause 39 of the Bill are satisfied.

Annex A

This Annex contains the charging principles which will be published by the Director in accordance with his powers under the Communications Act 2003 as soon as possible after 25 July 2003. If the Communications Bill²⁶ does not receive Royal Assent in time for it to enter into force by 25 July 2003 then Schedule 5 of the draft Electronic Communications (Networks and Services) Regulations²⁷ will apply instead. The section numbers cited in the notice are the clause numbers of the version of the Communications Bill which was introduced in the House of Lords on 5 March 2003. Therefore these section numbers may have to be amended to reflect any changes introduced to the Bill by the House of Lords.

'Charging Principles published for the purpose of fixing charges in accordance with sections 35 and 36 of the Act

1. Definitions

1.1 For the purposes of interpreting these Charging Principles the following definitions shall apply:-

'Act' means the Communications Act 2003;

'Director' means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

'First Charging Year' means the period beginning with 25th July 2003 and ending on 31st March 2004;

'Relevant Activity'²⁸ means any of the following:-

- a) the provision of Public Electronic Communications Services to end-users;
- b) the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers; or
- c) the making available of Associated Facilities to Communications Providers;

'Relevant Person' means a person liable to pay the administrative charge under section 35 of the Communications Act 2003; and

'Relevant Turnover' means-

²⁶ Available at www.communicationsbill.gov.uk

²⁷ The draft statutory instrument is available at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexD.pdf

²⁸ Guidance on the definition of relevant activity is available at [insert web link]

- (a) in the First Charging Year, the Turnover made by any Relevant Person in that Person's financial year ending in the period of 12 months ending on 24th July 2002;
- (b) in the Second Charging Year, the Turnover made by any Relevant Person in that Person's financial year ending in the period of 12 months ending on 24th July 2003; or
- (c) in any subsequent Charging Year, the Turnover made by any Relevant Person in that Person's financial year ending in the Charging Year immediately prior to the Charging Year before the Charging Year in question.

'Second Charging Year' means the period beginning with 1st April 2004 and ending on 31st March 2005.

'Turnover' means the turnover made from carrying on any Relevant Activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover.

1.2 Except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall the same meaning as it has in the Act.

2. Charging Principles

2.1 For the purposes of section 35 of the Act in any Charging Year the Director shall fix the administrative charge to be paid by each Relevant Person in the manner set out below.

2.2 The administrative charge to be paid by each Relevant Person shall be a percentage of either:

- (a) the lower figure of the turnover band determined by the Director to be applicable to each such person in accordance with sub paragraph 2.3; or
- (b) in any case where in accordance with sub paragraph 2.3 no turnover band has been determined to apply to any Relevant Person, that person's Relevant Turnover.

2.3 The Director shall determine the turnover band applicable to each Relevant Person by reference to the turnover bands in sub paragraph 2.7 below and the amount of Relevant Turnover notified to the Director by that person, save that no such applicable turnover band shall be determined by the Director where the Relevant Person's turnover is £1,000,000,000 or more.

2.4 The Director shall determine the percentage referred to in sub paragraph 2.2 by carrying out the calculation described in sub paragraph 2.5 below.

2.5 The Director shall:

- (a) take either the lower figure of the turnover band applicable to each person as determined in accordance with sub paragraph 2.3, or where in accordance with sub paragraph 2.3 no such turnover band applies, the total Relevant Turnover notified to the Director by that Relevant Person, and add all those amounts together;
- (b) divide the total amount of the Director's estimated annual costs of carrying out his functions set out in Section 35 (5) of the Act by the sum resulting from the calculation in paragraph (a); and
- (c) apply the quotient resulting from the calculation in paragraph (b) as the percentage.

2.6 The maximum percentage which may be applied by the Director under sub paragraph 2.2 shall be 0.08%.

2.7 The turnover bands for the purposes of fixing the administrative charges shall be as follows:

Pounds (million)		Pounds (million)
5	To	Less than 10
10	To	Less than 25
25	To	Less than 50
50	To	Less than 75
75	To	Less than 100
100	To	Less than 150
150	To	Less than 200
200	To	Less than 300
300	To	Less than 400
400	To	Less than 500
500	To	Less than 600
600	To	Less than 750
750	To	Less than 1000'

Annex B

This Annex contains the notice of designation the Director intends to publish as soon as possible after 25 July 2003 in accordance with powers under the Communications Act 2003. If the Communications Bill²⁹ does not receive Royal Assent in time for it to enter into force by 25 July 2003 then Schedule 4 of the draft Electronic Communications (Networks and Services) Regulations will apply instead, which reflects the wording of this notice of designation.³⁰ The section numbers cited in the notice are the clause numbers of the version of the Communications Bill which was introduced in the House of Lords on 5 March 2003. Therefore these section numbers may have to be amended to reflect any changes made to the Bill as it passes through Parliament.

'Notice of Designation under Section 31 of the Communications Act 2003

- 1) The Director General of Telecommunications ('the Director') in accordance with section 31 of the Communications Act 2003 ('the Act') hereby gives notice of a designation, set out below, that he has made on [insert date] for the purposes of section 35 of the Communications Act 2003 (Fixing of Charges).
- 2) The designation follows Oftel's consultation on the Implementation of the Authorisation Directive's provisions on notification and fees dated 10 February 2003³¹ and the consultation by the Secretary of State for Trade and Industry on the draft Electronic Communications (Network and Services) Regulations dated 19 March 2003³².

Designation for the purposes of section 35 of the Act

1. Definitions

1.1 For the purpose of interpreting this Designation the following definitions shall apply:-

'Act' means the Communications Act 2003;

'Director' means the Director General of Telecommunications as appointed under section 1 of the Telecommunications Act 1984;

'First Charging Year' means the period beginning with 25 July 2003 and ending on 31st March 2004;

²⁹ Available at www.communicationsbill.gov.uk

³⁰ The draft statutory instrument is available at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexD.pdf

³¹ Available at www.oftel.gov.uk/publications/licensing/2003/fees0203.htm

³² Insert web link

‘Relevant Activity’³³ means any of the following:

- a) the provision of Public Electronic Communications Services to End-Users;
- b) the provision of Electronic Communications Networks, Electronic Communications Services and Network Access to Communications Providers;
or
- c) the making available of Associated Facilities to Communications Providers;

‘Relevant Turnover’ means turnover made from carrying on any Relevant Activity after the deduction of sales rebates, value added tax and other taxes directly related to turnover; and

‘Second Charging Year’ means the period beginning with 1 April 2004 and ending on 31 March 2005.

1.2 Except in so far as 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.

2. Designation

2.1 During the First Charging Year, the Electronic Communications Network, Electronic Communications Service or Associated Facility which is designated for the purposes of section 35 of the Act is any Electronic Communications Network, Electronic Communications Service or Associated Facility where the person providing that Network or Service, or making available that Associated Facility had a Relevant Turnover of £5,000,000 or more in that person’s financial year ending in the period of 12 months ending on 24th July 2002.

2.2 During the Second Charging Year, the Electronic Communications Network, Electronic Communications Service or Associated Facility which is designated for the purposes of section 35 of the Act is any Electronic Communications Network, Electronic Communications Service or Associated Facility where the person providing that Network or Service, or making available that Associated Facility had a Relevant Turnover of £5,000,000 or more in that person’s financial year ending in the period of 12 months ending on 24 July 2003.

2.3 During any subsequent Charging Year, the Electronic Communications Network, Electronic Communications Service or Associated Facility which is designated for the purposes of section 35 of the Act is any Electronic Communications Network, Electronic Communications Service or Associated Facility where the person providing that Network or Service, or making available that Associated Facility had a Relevant Turnover of £5,000,000 or more in that person’s financial year ending in the Charging Year immediately prior to the Charging Year before the Charging Year in question.

³³ Guidance on the definition of relevant activity is available at [insert web link]

Annex C

Notice of intention by the Director General of Telecommunications to publish a general demand for information as soon as possible after 25 July 2003

Following on from the Statement made by the Director General of Telecommunications ('the Director') on Implementation of the Authorisation Directive's provisions on notifications and fees of 16 May 2003³⁴ the Director hereby gives notice of his intention to publish as soon as possible after 25 July 2003 a general demand for information, the text of which is set out below, in accordance with his proposed powers under the Communications Bill. The purpose of the demand will be to obtain information from persons liable to pay the administrative charge as proposed under clause 35 of the Communications Bill so as to be able to ascertain the administrative charges payable by them. In the event that the Communications Bill does not receive Royal Assent in time for it to enter into force by the 25 July the Director will publish the demand in accordance with his proposed powers under the draft Electronic Communications (Networks and Services) Regulations.³⁵

"General Demand for Information required by the Director under Section 132 of the Communications Act 2003 and issued in accordance with Section 134 of that Act for the purposes of calculating the administrative charge for the Charging Year commencing on 25 July 2003 and ending on 31 March 2004

1. Definitions

1.1 For the purposes of interpreting this Demand for Information the following definitions shall apply:-

'Act' means the Communications Act 2003;

'Director' means the Director General of Telecommunications as appointed under Section 1 of the Telecommunications Act 1984;

'Relevant Charging Year' means the period commencing on 25 July 2003 and ending on 31 March 2004;

'Relevant Person' means a person providing an Electronic Communications Network or Electronic Communications Services or making available an Associated Facility of a description designated by the Director for the purposes of Section 35 of the Communications Act 2003 such designation being contained in a

³⁴ Insert web link

³⁵ At present that power is contained in regulation 60 of the draft statutory instrument on networks and services which is available at www.communicationsbill.gov.uk/pdf/Implementation_Con_Doc_AnnexD.pdf

notice published by the Director on [insert date]³⁶, at Annex 1, in accordance with Section 31 of the Communications Act 2003;

‘Relevant Activity’ has the same meaning as in the Charging Principles, at Annex 2,³⁷ published by the Director on [insert date];

‘Relevant Turnover’ means the Turnover made by any Relevant Person in that Person’s financial year ending in the period of 12 months ending on 24 July 2002; and

‘Turnover’ means the turnover made from carrying on any Relevant Activity after deduction of sales rebates, value added tax and other taxes directly related to turnover.

1.2 Except insofar as 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.

2. Demand for Information

2.1 In accordance with his powers under Section 132 of the Act the Director hereby gives notice that all Relevant Persons are required to submit to the Director details of their Relevant Turnover.

2.2 The reason for this request is to enable the Director to calculate and collect the administrative charge for the Relevant Charging Year in accordance with his powers under Section 35 of the Act.

2.3 All Relevant Persons are required to send details of their Relevant Turnover for by **[insert date- six weeks after the date of publication]** to:

[Insert contact name]
Ofcom
50 Ludgate Hill
London EC4M 7JJ

2.4 Details of the Relevant Turnover of the Relevant Person must be supported by certification from two Directors and a copy of an extract of the statutory audited accounts prepared in accordance with the requirements of the Companies Act 1985 as amended by the Companies Act 1989.

3. Penalties for failure to respond

3.1 Relevant Persons who fail to respond to this Demand for Information could face financial penalties of up to £50,000 under Section 136 of the Act or criminal

³⁶ Insert web link.

³⁷ Insert web link. Guidance on the definition of relevant activity is available at [insert web link]

prosecution under Section 141 of the Act. Relevant Persons in serious and repeated contravention of the requirements in this Demand could face a direction, under Section 137 of the Act suspending their entitlement to provide electronic communication networks or electronic communication services or make associated facilities available.”
