

Public payphones: implementation of universal service obligations

Statement on a Direction to be made by the
Director General of Telecommunications

22 July 2003

Contents

Summary		3
Chapter 1	Introduction	5
Chapter 2	Regulatory procedure for proposed removals of PCBs	8
Chapter 3	Regulatory procedure for installation of new PCBs on the ground of social need	18
Chapter 4	Enforcement and conclusions	20
Annex A	List of respondents to the payphones consultation	22
Annex B	Direction on provision of call box services	23
Annex C	Specific condition on provision of call box services	28

Summary

S.1 The provision of Public Call Boxes ('PCBs') across the UK is a fundamental part of the UK's Universal Service Obligation ('USO'). Oftel considers that it is vital to ensure that the USO of adequate provision of PCBs across the UK is maintained.

S.2 From 25 July 2003, there will be a new regime for the regulation of telecommunications, in order to implement the requirements of the European Directives on communications, which came into force in April 2002. Under the new regime, licences will be abolished and replaced by general conditions of entitlement and specific conditions.

S.3 Oftel recently consulted on proposals for the specific universal service conditions that will be imposed upon designated universal service providers ('USPs'), including a condition regarding call box services. The condition on call box services (condition 3) will come into force on 25 July 2003. The condition allows the Director General of Telecommunications (the 'Director'), and subsequently Ofcom, to make a direction from time to time regarding the details of the regulation of call box services, including the procedure for removal and installation of PCBs.

S.4 Oftel undertook a separate consultation on proposals for the terms of such a direction. This statement sets out Oftel's conclusions following that consultation. The final version of the Direction on the implementation by USPs of the USO regarding PCBs (the 'Direction') is attached as **annex B** to this statement. The Director will formally make the Direction on 25 July 2003 under condition 3 of the universal service conditions.

Key conclusions

S.5 The final version of the Direction will adopt the wording of the draft direction and will cover matters that are at present contained in the guidelines on the procedure for the removal/re-siting of PCBs and on the installation of new PCBs on the ground of social need.

S.6 In addition, a USP will be able to proceed with the proposed removal or re-siting of the last PCB at a site where no objections have been received from certain local bodies within a 42 day period. The last PCB at a site must offer cash payment facilities.

S.7 Oftel has concluded that the definition of a 'Site', in relation to a Public Call Box, should be 'any area within a walking distance of 100 metres from that Public Call Box'. Oftel has also concluded that there should be an obligation on local bodies to give reasons for any written objection that they make to the proposed removal of a PCB.

S.8 The Director also recommends that a more comprehensive review of universal service with regard to PCBs should be carried out by Ofcom in 2004.

Chapter 1

Introduction

1.1 This statement sets out Oftel's final views on the Direction to apply to the designated Universal Service Providers ('USPs') of Public Call Boxes ('PCBs') from 25 July 2003 (the 'Direction'). A draft version of the Direction was subject to consultation from 15 April 2003 to 15 May 2003 (the 'payphones consultation document': see 'Public Payphones: implementation of universal service obligations', 15 April 2003, at www.oftel.gov.uk/publications/consumer/2003/pcbddd0304.htm).

1.2 British Telecommunications ('BT') and Kingston Communications ('Kingston') are the USPs under the current regulatory regime, and will also be the designated USPs under the new regime that comes into force on 25 July 2003. BT's universal service obligation ('USO') extends to the whole of the UK except Hull. Kingston's USO covers the Hull area only.

1.3 As USPs, BT and Kingston are subject to a range of obligations, including that of ensuring the adequate provision of PCBs in order to meet the reasonable needs of end-users in terms of geographical coverage, the number of PCBs, and the quality of call box services. PCBs are payphones situated on public land to which the public has unrestricted 24 hour access and are currently operated under an individual licence.

1.4 Oftel's most recent research confirms the continuing need for PCBs (see *Consumers' use of fixed and mobile telephony, Oftel residential survey Q13 May 2003*, which will be available at www.oftel.gov.uk/publications/research/2003/q13fixr0703.htm – due to be published late July). 46 per cent of UK adults use public payphones at least occasionally and two per cent claim that PCBs are their main method of making and receiving calls. One per cent of UK households have neither a fixed line phone nor a mobile phone. Despite the increase in mobile usage, 25 per cent of adults do not have a mobile phone. The groups that use PCBs most include lower income groups, younger consumers and those without a fixed or mobile phone. PCBs therefore remain an integral part of the USO in the UK, in spite of declining usage, and Oftel is committed to ensuring that the USO is met.

Transition to the new regime

1.5 The existing regime for regulating payphones is based on a condition in the licences of BT and Kingston which obliges them to publish, from time to time and following consultation with the Director General of Telecommunications (the 'Director'), guidelines with regard to PCB installation and removal. BT published the latest version of its guidelines (the 'BT guidelines') in April 2003, which is available at

www.btplc.com/Corporateinformation/Regulatory/RegulatoryInformation/OftelConsultativeDocuments/Payphoneguidelines/index.htm.

1.6 On 25 July 2003, licences will be abolished and replaced by a new regime in order to implement the European Directives on communications (the 'Directives'). The Communications Act 2003, which received Royal Assent on 17 July 2003, achieves implementation of the Directives in the UK.

1.7 Under the new regime, all types of payphones, including PCBs, will be regulated under the general conditions of entitlement. Designated USPs of PCBs will also be subject to specific universal service conditions and to any direction issued by the Director (and subsequently by Ofcom) under those conditions, including the Direction that is the subject of this statement.

1.8 It is intended that on 25 July 2003 the Secretary of State will make the Electronic Communications (Universal Service) Order 2003 (the 'Universal Service Order'), which sets out the areas to be covered by universal service obligations. Section 4 of the Schedule to the Universal Service Order will set out the basic USO in relation to public pay telephones.

The specific universal service condition on call box services

1.9 The proposed specific universal service condition on call box services sets out the basic USO of adequate provision of PCBs across the UK. The proposed condition then states that, for the purposes of the condition, the Director/Ofcom may from time to time make a direction specifying, for example, the process for removal or re-siting of a Public Call Box. In other words the Direction may set out in more detail the obligations on the designated USPs of PCBs (see condition 3 in www.oftel.gov.uk/publications/eu_directives/2003/uso0303.htm).

1.10 Oftel will shortly be issuing a statement summarising its conclusions to its consultation on the specific universal service conditions, including the condition on the provision of call box services. The final version of this condition is attached as **annex C**. The final version amends the proposed condition in two minor respects, in the light of the Director's intention to issue a separate direction setting out the procedure for removal and installation of PCBs in more detail.

1.11 Firstly, paragraph 3.2 of the proposed condition, which was attached as Annex A to the payphones consultation document, provided that USPs must obtain the written consent of certain local bodies where they proposed to remove the last PCB at a site. This provision has now been replaced by a simple reference to the need for USPs to follow the procedure to be set out in any direction to be issued by the Director/Ofcom, where they propose to remove the last PCB at a site. This amendment improves the organisation of the obligations by keeping the text of the condition succinct while confining the detail of the procedure to the Direction; it also ensures that the condition does not duplicate the provisions of the Direction.

1.12 Secondly, following the payphones consultation on the definition of a site, the term 'site' as mentioned in paragraph 3.2 of the condition has now been added to the list of definitions at the beginning of the specific conditions. Oftel's conclusion on the definition of a site in the context of the procedure for removing PCBs is discussed in chapter 2 of this statement.

The Direction: details of the USO regarding PCBs

1.13 Paragraph 3.4 of the condition on call box services gives the Director the discretion to make more detailed provisions regarding adequate provision, removal and installation of PCBs in the form of a direction to be issued from time to time.

1.14 The text of the draft direction, as set out in Annex B to the payphones consultation document, was similar to that of the BT guidelines. In addition, the draft direction contained certain new features and Oftel invited comments on these.

1.15 In the payphones consultation document, Oftel also raised other issues that were relevant to the regulation of PCBs but that it considered would be more appropriately examined as part of a comprehensive review of universal service that Oftel is recommending that Ofcom should carry out in 2004 (the 'proposed USO review').

1.16 Oftel received 15 responses to the payphones consultation document; a list of the respondents is set out at **annex A**. The following chapters of this statement discuss the terms of the final version of the Direction and Oftel's conclusions following a review of each the responses to the payphones consultation document.

Chapter 2

Regulatory procedure for proposed removals of PCBs

Introduction

2.1 Paragraphs 2.1-2.5 of the draft direction, attached as annex B to the payphones consultation document, outlined the proposed procedure to be followed by USPs where they propose to remove or re-site the last PCB at a site. No such obligations apply where the removal or re-siting will result in one or more other PCBs remaining at the site.

2.2 In their responses, both BT and Kingston highlighted the downward trend in PCB usage and the resulting decrease in revenues. They pointed out that tariff increases to rectify this may be self-defeating if they further depress demand, as well as being contrary to the philosophy of the USO.

2.3 BT argued that the fall in consumer demand means that its PCB network cannot be sustained at its current size. BT has therefore proposed, subject to its USO, to remove certain PCBs that are little used and therefore loss-making.

2.4 As the provider of universal service in the UK (except the Hull area), BT is under an obligation to ensure adequate provision of PCBs across the UK. As noted in chapter 1, Of tel's research confirms that there is a continuing need for PCBs. The proportion of frequent PCB users (at least monthly) has remained fairly stable over the last three years and is currently at 1 in 10 UK adults. The latest figure for irregular usage of PCBs (less than monthly) was 36 per cent of UK adults (see *Consumers' use of fixed and mobile telephony, Of tel residential survey Q13 May 2003*, which will be available at www.of tel.gov.uk/publications/research/2003/q13fixr0703.htm – due to be published late July).

2.5 The final Direction should allow USPs the flexibility to sustain their payphones business, while at the same time safeguarding the USO in order to ensure that the established social need for PCBs is adequately met.

2.6 In the payphones consultation document, Of tel invited comments on the terms of the draft direction and on other proposals, including the addition of a definition of a site and the proposed requirement on local authorities to give reasons for any written objections made to proposed removals. Of tel's conclusions in relation to each proposal are set out below, having regard to the responses of consultees in each case.

Definition of a PCB 'site'

2.7 The issue of defining a site arises because the Direction, like the BT guidelines, provides that USPs of PCBs must consult with certain local bodies where they propose to remove the last PCB at a 'site'.

2.8 To date, 'site' has not been defined formally and the issue did not arise because until recently there were very few proposals to remove PCBs. However, as noted above, BT has been rationalising its payphones business over the last few years, and recently embarked upon a programme of proposed removals.

2.9 The issue of the definition of a site is crucial as to whether BT/Kingston is required to consult with and obtain consent from local bodies before a PCB can be removed. The larger the area for a site, the more likely a particular PCB will form part of an existing 'site' with another PCB, and therefore consultation prior to removal will not be necessary, providing that a single PCB in that site would remain. It is therefore necessary for the Direction to contain a definition of what is meant by a 'site'.

2.10 Oftel consulted on the potential definition of a PCB 'site' as part of the payphones consultation, offering the following four options (all relating to walking distance): within ten metres, 50 metres, 200 metres and 800 metres. Whilst these were given as working examples of what might constitute a site, respondents were free to offer views on any other potential options, as some duly did.

2.11 In response, consumer groups, including the Scottish Advisory Committee on Telecommunications (SACOT), the Northern Ireland Advisory Committee on Telecommunications (NIACT), the Welsh Advisory Committee on Telecommunications (WACT) and the Public Utilities Access Forum (PUAF), all favoured the 50 metre option. DIEL favoured the ten metre option, with the 50 metre option as its second choice. DIEL raised the importance of ensuring that less mobile users who may be older or disabled can access more distant PCBs.

2.12 Two individual respondents favoured the 200 metre option. Kingston favoured the 200 metre option for urban/suburban areas but suggested 800 metres would be more appropriate for rural areas. A couple of respondents put forward definitions that were outside the four options suggested by Oftel. One individual respondent supported a distance of within 500 metres. The response of Consumer Communications for England ('CCE') suggested that a site should be defined as 'where a PCB exists at 25 July 2003'.

2.13 BT favoured a much broader definition of a site (a minimum of 400 metres but ideally 800 metres). BT stated that it has traditionally worked on the assumption that 100 metres has been the informal understanding as to what is meant by a 'site'. However, BT would now like the concept of 'site' to be expanded in the light of recent changes in usage of PCBs and in mobile phone uptake. A broader definition would obviously facilitate BT's rationalisation programme.

2.14 In the late 1980's and early 1990's, BT added a significant number of PCBs to its network, but since then usage has substantially fallen. BT states in its response that it has suffered a 37 per cent decline in revenue over the last three years from its PCBs, with over 40 per cent of its PCBs now falling below the 'break even' mark. BT argues that its payphones business is in serious decline due to this decrease in usage, such that it is only just profitable.

Oftel's conclusions on site definition

2.15 It is important to emphasise that this issue is about the process for PCB removal, rather than about density of PCB coverage. The definition of site relates to the distance that someone is prepared to travel to the next available PCB when they are already at a site, rather than the intervals at which there should be PCBs in rural and urban areas across the UK. The latter issue will be examined thoroughly as part of the proposed USO review.

2.16 Based on these considerations and the responses above, Oftel concludes that the definition of a site should be 'an area within a walking distance of 100 metres of an existing PCB'. Oftel has determined that such a distance gives the USP sufficient flexibility whilst at the same time providing the necessary safeguard for users of PCBs. Consideration of the responses suggests that 50 metres would be too restrictive to USPs.

2.17 CCE's suggestion of "where a PCB exists at 25 July 2003" would mean that the removal of every PCB would require the USP to follow the regulatory procedure in paragraphs 2.2-2.5 of the Direction, including consultation with local bodies. Oftel considers that this is too onerous on USPs, especially in cases where two or more PCBs are situated very close to one another.

2.18 On the other hand, Oftel considers that 200 metres deviates too far from the majority consumer view of 50 metres, and could make it harder to find the next available PCB, since at 200 metres it may not be within sight. Oftel further considers that the options of 400 and 800 metres, while receiving some support from the USPs, impose too great a burden on the consumer to travel when looking for the next available PCB, especially for members of the public that are elderly and/or have disabilities, and in the case of emergency situations.

2.19 Although 100 metres was not one of the four options given in the consultation document, Oftel considers that it is the best regulatory solution here in representing a considered and pragmatic compromise between the 50 and 200 metre options, both of which were well supported.

2.20 DIEL and PUAUF suggested that the distance should refer to a 'safe and well-lit route' rather than simply walking distance. Oftel considers that the definition of a 'site' should be kept as objective as possible, by reference to average walking distance, rather than introducing a more subjective criterion. In Oftel's view a safety requirement could also be subject to change, according to the social

conditions prevailing in a particular area at any one time, and as a social issue is as much a matter for local councils as for operators.

2.21 DIEL and PUAf also suggested that when a PCB is removed, there should be signage to the next available PCB, as well as other steps to draw it to the public's attention, such as mail-drops. Oftel considers that the imposition of this obligation on USPs would be unduly burdensome at this stage. However, it would be worthwhile for these suggestions to be raised in the context of the proposed USO review, in particular if the USO were to be redefined on a PCB by PCB basis.

2.22 In conclusion, Oftel accepts that there are a number of different factors that need to be considered in order to arrive at the appropriate definition of 'site', many of which are subjective, including different users' willingness and ability to walk or travel the specified distance to the next available PCB. Balancing each of the regulatory options so as to be as proportionate and non-discriminatory as possible, Oftel concludes that the definition of 'site' in the Direction should be set at 100 metres.

Procedure for proposed removal or re-siting of a PCB

2.23 The draft direction provided that USPs must write to the parties set out in the draft direction in the event of a proposed removal, giving them the opportunity to make written objections regarding the proposed removal/re-siting of the last PCB at a site.

Consultation with local bodies

2.24 Oftel proposed that where, having made all reasonable efforts to do so, the USP is unable to contact the local parish council (in England), local community council (in Scotland/Wales) and/or the appropriate local community groups (in Northern Ireland), the USP may ask the Local Planning Authority ('LPA') to forward the notice of its proposal to the relevant local body or bodies (paragraph 2.4 of the draft Direction).

2.25 The only respondent that commented on this proposal was BT, who responded in favour of it. Both BT and Oftel have experienced difficulty in obtaining comprehensive information regarding the addresses of parish and community councils in the UK. Oftel therefore concludes that, for the sake of practicality, this provision should form part of the final Direction (see paragraph 2.4).

2.26 A response from Antrim Borough Council in Northern Ireland raised the fact that at the moment the draft direction limits consultation in Northern Ireland to the LPA and, where appropriate, to local community groups. Antrim Borough Council suggested that it would be helpful for local councils in Northern Ireland to be included in the consultation process since such councils are made up of elected members of the local community, whereas many community groups are small and

not as easily contactable. In Northern Ireland, the LPA has no direct link with the local community and is a completely separate body to the local council.

2.27 In order to ensure that the consultation process does include the views of the local community in Northern Ireland, Oftel has added 'local councils' to the list of bodies in the Direction to whom USPs are obliged to give notice and to whom members of the public should make representations (see paragraphs 2.2(c)(iv) and 2.3(c)).

2.28 The CCE suggested that local community groups in England may also wish to object to the complete removal of a PCB and therefore that, where their existence is known, consent should be sought from them. The procedure set out in the draft direction already enables local community groups to make their views known, through the obligation on USPs to invite interested parties to make representations to LPAs and other local bodies who have the power to make written objections on their behalf. Oftel considers that this is a more efficient and practical means of ensuring that the views of such groups are included, rather than imposing such an obligation on USPs.

2.29 For the sake of clarity, as explained in paragraphs 3.5.6 and 3.5.7 of Oftel's consultation document on public payphones of November 2001 (available at www.oftel.gov.uk/publications/consumer/payp1101.htm#3), the incorporation into the procedure of consultation with local community groups in the specific context of Northern Ireland reflects the Director's duty to ensure that his functions are discharged in a manner consistent with the requirements of the Northern Ireland Act 1998.

Written objections by local bodies

2.30 The draft direction provided that where the USP had received any written objections by any of the bodies in paragraph 2.3 to its proposals for removal/re-siting of a PCB within the 42 day period specified, then the USP should not be able to carry out the proposed removal/re-siting (paragraph 2.5).

2.31 Oftel proposed that if the USP did not receive written objections from the LPA (and/or any other of the bodies described in paragraph 2.3) during that period, it should be able to carry out its proposed removal/re-siting.

2.32 All the responses on this issue welcomed this proposal. Oftel therefore considers that this provision should be adopted in the final Direction. One member of the public suggested that there should also be an obligation on the USP to inform the regulator where no objections have been received to a proposed removal and therefore that the removal was proceeding on this basis. Oftel does not consider that this obligation is necessary, since the USPs already send Oftel regular information reports containing data on removals.

2.33 Oftel does however recognise the importance of ensuring that the removal procedure is transparent, and that there is clear evidence available of any written objections so that disputes between the USP and local body are minimised. It is BT's policy to send out notices of a proposed removal by registered post, to ensure evidence of receipt. BT also sends out a copy of Frequently Asked Questions in order to explain the procedure for proposed removals to local bodies. In addition, BT sends out a letter seven days before the expiry of the 42 day notice period to remind local bodies of their right to make written objections. Oftel is satisfied that these measures ensure that the relevant local bodies are well informed of the proposed removals. At present, these measures exist on an informal basis, but in the event of any transparency issues arising, the Director has the power to require them on a formal basis.

Obligation on local bodies to provide reasons for objections

2.34 Oftel also invited views on the proposal that any of the local bodies entitled to make written objections to proposed removals/re-sitings of the last PCB at a site should be required to give reasons for their objection.

2.35 All responses on this proposal were supportive. NIACT argued that it would enable operators to make informed decisions about the future of the PCB site. It was generally thought that this measure would encourage a more constructive dialogue between USP and local bodies, including bringing to the USP's attention particular factors in relation to that site which may not hitherto have been appreciated. Oftel considers that this is a proportionate obligation in relation to the power of local bodies to prevent removals by making written objections, and that it improves the transparency of the procedure. This proposal may also be useful in providing evidence on particular sites for the proposed USO review.

2.36 Oftel has therefore concluded that this obligation should form part of the final Direction (see paragraph 2.5). This obligation is however without prejudice to the fact that any written objection received from one of the bodies listed in paragraph 2.3 of the Direction within the 42 day notice period means that the USP should not proceed with the proposed removal of the last PCB at a site.

2.37 NIACT also suggested that, in order to make the consultations meaningful, USPs should be required to inform local bodies of the turnover from a PCB that is proposed for removal. While Oftel does not consider that it is appropriate to mandate the supply of such commercial information in the Direction itself, clearly the provision of such information by USPs, whether in response to requests from local bodies or at all, would enable local bodies to provide more informed responses. It is therefore hoped that USPs will co-operate with local bodies in terms of requests for information about the particular PCB proposed for removal, especially in light of this new obligation on the local body to provide reasons.

2.38 One member of the public suggested that some thought should be given as to what might be 'acceptable' and 'unacceptable' reasons for objecting to a

proposed removal. As noted above, under the procedure in the final Direction, any written objection to a proposed removal means that the removal may not occur. However, it is hoped that local bodies will provide well-reasoned arguments for any objections and will work with the USPs in the case of particular PCBs until such time as the USO can be subjected to thorough examination on a PCB by PCB basis as part of the proposed USO review.

Representations by interested parties

2.39 Under Condition 6.4(d) of the general conditions of entitlement (which the Director will set by 25 July 2003 pursuant to his powers under the Communications Act 2003, and which were published by OfTel on 9 July at: www.oftel.gov.uk/publications/licensing/2003/cond0703.htm), there is an obligation on all providers of PCBs, not just USPs, where they propose to cease providing a telephony service to and from that PCB, to put up a notice in the PCB for a period of 42 days alerting the public to this fact.

2.40 As this statement makes clear, there are additional obligations on the USPs of PCBs (ie BT and Kingston) where they wish to remove or re-site a PCB and/or to cease to provide call box services. Paragraph 2.2 of the draft direction provided that USPs must put up a notice in the relevant PCB giving interested parties the opportunity to make representations regarding the removal/re-siting. It further provided that representations could be made to either the LPA, the local parish council in England, the local community council in Scotland and Wales, and to appropriate local community groups in Northern Ireland.

2.41 As noted in paragraph 2.26 and 2.27 above, following the response from Antrim Borough Council in Northern Ireland, the final version of the Direction contains a small addition to this paragraph. In order to ensure that interested groups in Northern Ireland are fully represented, the local council has been added to the list of bodies to which representations can be made (see paragraph 2.2(c)(iv) of the Direction).

2.42 Under the terms of the Direction, the notice must specify that interested parties have 42 days from the date on which the notice was displayed to make representations. The USP must consider all representations made to it during that period and is not allowed to remove or re-site a PCB under any circumstances until the representation period has closed.

2.43 One member of the public suggested that the USP should be obliged to publish proposed removals in the local press as well as in the boxes themselves. OfTel considers that the current obligation on USPs both to put up notices in the boxes themselves and to write to local bodies is sufficient to alert representative and interested members of the local community to the proposal, and therefore that this suggested obligation is not necessary.

Cash payment facilities

2.44 In its payphones consultation, Oftel also proposed that the last PCB at a site should offer cash payment facilities (paragraph 2.6).

2.45 All responses on this issue were in favour of this proposal. BT stated that it was happy to agree that the last PCB at a site should offer cash facilities. However, BT raised the fact that a small number (less than 100) of its single box sites do not accept cash payment. Most of these were installed at a time when theft-related vandalism was a problem and this was the best means of maintaining working service in the area.

2.46 Since theft and vandalism remain an issue at this small number of sites, albeit not at past levels, Oftel accepts BT's suggestion that it would be sensible for these PCBs to remain as they are ie without the option of cash payment. However, Oftel considers that all other existing PCB sites, and any future PCB sites, should be subject to the obligation that at least one PCB at that site must offer cash payment.

2.47 Oftel therefore concludes that the cash payment obligation should be included in the final Direction, subject to an exception covering the limited number of BT's PCBs that do not accept cash payment for historical reasons (see paragraph 2.6).

Request for removals

2.48 Kingston raised the fact that the Direction does not address the situation where a USP receives a request from the local community (whether an individual member or a local group) to remove or re-site a PCB. This may occur for example where a PCB has been subjected to repeated vandalism, theft or damage. In such cases, removal of the PCB may be in the interests of both the local community and the USP.

2.49 Oftel considers that this issue is best addressed on an informal level in the first instance and does not propose to make provision for it in the Direction. This enables a more flexible approach to requests, which will inevitably depend on the facts of each case. It also seeks to avoid the imposition of undue regulation.

2.50 Notwithstanding this, Oftel would underline that, when considering any such requests, the USP should be mindful of the USO of adequate provision in paragraph 3.1 of the specific condition on call box services. The USP should also ascertain the extent to which the request is likely to reflect the view of the local community as a whole (more likely in the case of a request from a local council/planning authority than from an individual member of the public).

Appeals

2.51 In its payphones consultation document, Oftel noted that no appeals procedure currently applies in relation to the proposed removal of PCBs and that, since the introduction of such a procedure would be a significant change to current practice, and therefore require thorough consultation on the regulatory options available, it would best be considered as part of the proposed USO review.

2.52 Nevertheless, Oftel recognises the importance of an appeals system in order to guarantee the human rights of both operators and local bodies. In their responses, both BT and Kingston stressed the need for an independent appeals mechanism to be set up as soon as possible, in order to enable them to have some recourse to arbitration in the event of disputes with local bodies over proposed removals or installations. Kingston raised the scenario where, in future, a USP may wish to challenge the reasonableness of an objection in situations where there is strong support for removal of a PCB, for example from evidence of significant economic loss due to low usage, high rates of vandalism, illegal drug use, etc.

2.53 Following these responses, Oftel has had discussions with BT about the possibility of using or setting up an independent appeals body to adjudicate any disputes arising under the Direction between USPs and local bodies. Therefore while the Direction itself does not provide for an appeals mechanism, this matter will be further explored with the USPs in order to progress it as soon as possible.

The proposed USO review

2.54 BT stated in its response that the USO for PCBs should be redefined as soon as possible given the rate of change regarding decreasing usage, which has seen the market decline by more than 50 per cent in three years. BT advocated specifically designating those PCBs that meet a significant social need, to which the USO would apply, as compared to those 'non-USO' PCBs whose future could reasonably be determined on economic grounds alone.

2.55 BT further argued that the creation of an easily applicable PCB by PCB definition of the USO would have benefits for all parties. PCBs designated as 'USO' would be secured a long-term future, while local bodies would be freed from the burden of time-consuming and administratively costly discussions on individual removals. BT also argued that separate funding for universal provision of PCBs should be made available.

2.56 It is intended that the proposed USO review should comprise a fundamental and comprehensive assessment of the current and future need for PCBs. This will include exploring the possibility of moving from the existing regulatory procedure for removals. All regulatory options will need to be considered. The precise timetable and substance of the proposed USO review will however be a matter for Ofcom.

2.57 In the meantime, the terms of the Direction aim to provide a transparent and proportionate framework for the regulation of PCBs in order to safeguard the USO of adequate provision as set out in the specific condition on call box services.

Chapter 3

Regulatory procedure for installation of new PCBs on the ground of social need

Proposals

3.1 Paragraph 3.3 of the specific universal service condition on call box services (condition 3) confers an obligation on USPs to consider requests for new PCBs in accordance with any criteria set out in any direction made by the Director from time to time.

3.2 In paragraphs 2.7-2.9 of the draft direction attached as annex B to the payphones consultation document, Oftel set out the proposed procedure for the installation of new PCBs on the ground of social need. This procedure was based on the relevant provisions in the existing guidelines agreed between BT and Oftel, which reflect an agreement by BT to install new PCBs where certain criteria for assessing social need have been met.

3.3 Paragraph 2.8 of the draft direction set out the proposed evaluation criteria to be used by USPs when considering a request. The evaluation criteria score each request according to the following three factors:

- the size of the community in the area not served by existing PCBs;
- the type of accommodation in the area – whether private owner occupier, private rented or social housing; and
- the walking distance to an existing PCB.

3.4 The consultation document also proposed that the substance, practicality and effectiveness of the agreement and the evaluation criteria should be subject to a thorough examination again as part of the proposed USO review.

Responses

3.5 Respondents were generally happy with the existing evaluation criteria. There was a suggestion from SACOT, PUAFA and DIEL that a new criterion should be added relating to 'inadequate or non-existent mobile coverage'. These groups pointed out that the growing dependence on mobile phones, whilst reducing the overall usage of PCBs and fixed lines, means that PCBs are needed all the more where there is inadequate or non-existent mobile coverage, especially in rural areas or in an emergency situation.

3.6 The basis of the agreement with BT for installing new PCBs is social need; in other words, it is essentially directed at those areas of social deprivation where consumers are unlikely to have either a fixed line or a mobile phone. Oftel therefore considers that it is not appropriate to add this to the evaluation criteria.

3.7 Several respondents stressed the importance of assessing and researching the changing needs for PCBs – their priority, positioning and the costs involved – using hard evidence and sophisticated methods of analysis. Both BT and Kingston suggested that improved demographic tools, such as ACORN and MOSAIC, could be used to help pinpoint in a more refined manner the areas where social need is greatest and to assess areas where housing falls into multiple categories. Finally, there was a general consensus that the criteria should be fully re-examined under the proposed USO review.

3.8 In the light of these responses, Oftel concludes that for the meantime the evaluation criteria should remain the same, pending a more comprehensive appraisal as part of the proposed USO review. Oftel intends to recommend to Ofcom that the proposed USO review should include an assessment of the utility of this agreement for the installation of new PCBs, given that it has historically been little used in practice because the existing network to date has been extensive in terms of both number of PCBs and coverage. If the continuing need for such an agreement is confirmed, it is hoped that the evaluation criteria can be updated as far as possible using modern demographic tools. Oftel is already in the process of discussing methods of analysis further with BT in this context.

Chapter 4

Enforcement and conclusions

Enforcement of regulatory procedure: information-gathering powers

4.1 Oftel monitors the provision of PCBs, and compliance with the regulatory procedure for removals and installations of PCBs, on a regular basis. Both SACOT and PUAf suggested that the final Direction should include reporting requirements on the USPs in order to enable Oftel to do so effectively.

4.2 Oftel currently receives reports every four to six months from BT and Kingston regarding certain data, including the number of PCBs removed and installed and the reasons in each case, and the percentage of PCBs that are accessible to wheelchair users. The basis of the reporting is an informal arrangement between the USPs and Oftel. To date, this arrangement has worked effectively.

4.3 SACOT suggested that the information provided by USPs on a regular basis should include the number of occasions on which BT gave notice of the proposed removal of the last PCB at a site. Oftel does not consider that this obligation is necessary, since Oftel already receives regular information reports containing data on removals.

4.4 However, Oftel supports SACOT's suggestion that BT's information reports should include the number of occasions on which, as a result of a written objection received from a local body, BT did not proceed with the removal of the last PCB from a site, and considers that this should be incorporated into the reporting criteria from now on.

4.5 Finally, SACOT suggested that BT and Kingston's information reports should be in the public domain. This would increase the transparency of the regulatory procedure and enable greater awareness of the number of removals and installations taking place. Oftel supports this idea in principle and intends to explore it further with the USPs.

4.6 At the moment, Oftel considers that the current system is proportionate to Oftel's requirements for enforcement purposes and avoids the need for unnecessary regulation. It is also flexible in enabling the type of information requested to be adapted according to any changes in the procedure for removal or installation of PCBs. It is therefore intended that the current informal arrangement for information provision should continue under the new regime and that there is no need for Oftel to make explicit provision for it in the Direction.

4.7 However, if it did become necessary for Oftel to require information from USPs about any aspect of their performance under the condition and/or Direction, Oftel is satisfied that Sections 135-146 of the Communications Act 2003 ('Information provisions') would enable Oftel, and subsequently Ofcom, to do so.

Conclusions

4.8 Oftel considers that the regulatory procedure for removal and installation of PCBs, as discussed in this statement and as set out in the final Direction, is objectively justified by the need to uphold the USO of ensuring adequate provision of PCBs across the UK. It seeks to balance the interests of stakeholders such as local authorities and end users against those of the USP so as not to discriminate against any particular group of society.

4.9 The Direction essentially reflects the existing regulatory procedure regarding removal and installation of PCBs. Oftel acknowledges that the system to date, which uses restrictions on the removal procedure as the basis for defining adequate USO provision, has limitations, especially in light of decreasing usage and demand. In the short term, Oftel has tried to adapt the existing procedure so that it is both practicable and non-discriminatory, pending the proposed USO review. The preparatory work for the proposed USO review has already been set in motion and Oftel is working with BT in this respect.

4.11 The procedure laid out in the Direction is transparent in clearly providing the steps that a USP must follow where it proposes to remove or re-site a PCB. The addition of the definition of 'site' aims to increase the clarity and transparency of the procedure further. The incorporation of the evaluation criteria on the face of the Direction (at paragraph 2.8) also makes clear the basis upon which USPs will assess any request for installation of new PCBs on the ground of social need.

4.12 The terms of the Direction are proportionate and non-discriminatory in striking a balance between, on the one hand, providing USPs with the flexibility to sustain their payphones business at a time when they are under increasing commercial pressure due to falling usage, and, on the other, ensuring that the USO, in particular the social need for payphones (as confirmed by Oftel's most recent research), is adequately met.

4.13 The Director is therefore satisfied that, pending the proposed USO review, the Direction is objectively justified, non-discriminatory, proportionate and transparent, as required by Section 49(2) of the Communications Act 2003.

4.14 In making this Direction, the Director has also considered the Community requirements set out in Section 4 of the Communications Act 2003, including the third Community requirement, which is to promote the interests of all citizens of the European Union.

Annex A

List of Respondents to the payphones consultation

1. Clive D.W. Feather
 2. G. Sasse
 3. NIACT (Northern Ireland Advisory Committee on Telecommunications)
 4. CCE (Consumer Communications for England)
 5. Brian Hunt
 6. The Equality Commission for Northern Ireland
 7. Michael Bond
 8. PUAf (Public Utilities Access Forum)
 9. WACT (Welsh Advisory Committee on Telecommunications)
 10. SACOT (Scottish Advisory Committee on Telecommunications)
 11. Kingston Communications
 12. British Telecommunications
 13. DIEL (Telecommunications for the disabled and elderly)
 14. Aberdeen and Grampian Chamber of Commerce, Scotland
 15. Antrim Borough Council, Northern Ireland
-

Annex B

Final Direction

Direction given under Condition 3 imposed on BT and Kingston as a universal service condition pursuant to Section 45 of the Communications Act 2003

Whereas:

(A) Following a notification (the 'Notification') given by the Director General for Telecommunications ('the Director') on 22 July 2003¹ under Regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 (the 'Universal Service Regulations') confirming proposals to designate British Telecommunications plc ('BT') and Kingston Communications (Hull) plc ('Kingston') as universal service providers, BT and Kingston were so designated on 25 July 2003 pursuant to paragraph 7(1) of Schedule 18 to the Communications Act 2003 ('the Act')

(B) The Notification also confirmed proposals for universal service conditions to be imposed on BT and Kingston including Condition 3 ('Provision of Call Box Services') (the 'Condition'). Pursuant to paragraph 7(2) of Schedule 18 to the Act, Condition 3 was imposed upon BT and Kingston on 25 July 2003;

(C) Paragraph 3.4 of the Condition provides, inter alia, that for the purposes of the Condition, the Director may from time to time make a direction specifying:

- i. the process to be followed prior to the removal or re-siting of a Public Call Box or the cessation of any Call Box Services; and
- ii. the matters to be taken into account in considering a request received under paragraph 3.3 of the Condition for the provision of a new Public Call Box and related Call Box Services in order to meet the reasonable needs of a local community;

(D) This Direction is given pursuant to paragraph 3.4 of the Condition and relates to the matters specified in paragraph (C) above (which fall within sub-paragraphs (b) and (c) of paragraph 3.4 of the Condition);

(E) For the reasons set out in the Statement accompanying this Direction the Director is satisfied that this Direction is:

- objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;

¹ Note that this is the date of publication of the Director's final statement, entitled 'Designation of BT and Kingston as universal service providers and the specific conditions', following the consultation 'Notification of proposals for the designation of universal service providers and the setting of conditions', 12 March 2003, see www.oftel.gov.uk/publications/eu_directives/2003/uso0303.htm.

- not such as to discriminate unduly against particular persons or against a particular description of persons;
- proportionate to what it is intended to achieve; and
- in relation to what it is intended to achieve, transparent.

(F) For the reasons set out in the Statement accompanying this Direction the Director is satisfied that he has acted in accordance with the relevant duties set out in Section 4 of the Act;

(G) A notification of a proposal to give this Direction was given in accordance with Clause 46(4) of the Communications Bill (5 March 2003 version) on 15 April 2003;

(H) The Director has considered every representation made to him within the specified consultation period in making this Direction and these representations are discussed in the statement accompanying this Direction;

THEREFORE:

Pursuant to paragraph 3.4 of the Condition the Director makes the following Direction:

Part 1: Definitions and Interpretation

1.1. For the purpose of interpreting this Direction the following definitions shall apply:

"Site", in relation to a Public Call Box, means any area within a walking distance of 100 metres from that Public Call Box; and

"USP" means British Telecommunications plc and Kingston Communications (Hull) plc².

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, the Universal Service Regulations or the Condition as appropriate.

1.3. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

1.4. Headings and titles shall be disregarded.

² Note that the proposal to designate BT and Kingston as USPs was recently subject to consultation: see www.oftel.gov.uk/publications/eu_directives/2003/uso0303.htm.

Part 2: The Direction

Complete Removal of Public Call Boxes/Call Box Services

2.1 The USP shall not remove or re-site any of its Public Call Boxes, and/or cease to provide Call Box Services, where such removal, re-siting or cessation of provision would result in the complete removal of Public Call Boxes and/or Call Box Services from a Site, unless the requirements set out in paragraphs 2.2 – 2.5 of this Direction have been satisfied.

2.2 The USP shall display a notice in a prominent place on the Public Call Box which it proposes to remove or re-site and/or to which it intends to cease to provide Call Box Services informing the public of the proposed change and setting out-

- (a) the nature and effect of the proposal;
- (b) the period within which members of the public may make representations about the proposal which shall be 42 days after the day on which the notice is first displayed;
- (c) the bodies to whom representations may be made about the proposal which shall be any of the following -

- (i) the local planning authority;
- (ii) in the case of England, the local parish council;
- (iii) in the case of Scotland and Wales, the local community council;
- (iv) in the case of Northern Ireland, the local council and any appropriate local community groups,

and the USP shall not bring its proposal into effect unless it has considered all representations made to it in relation to the proposal within the period specified in sub-paragraph (b).

2.3. The USP shall give notice of its proposed removal, re-siting or cessation of provision to the local planning authority and -

- (a) in the case of England, the local parish council,
- (b) in the case of Scotland and Wales, the local community council,
- (c) in the case of Northern Ireland, the local council and any appropriate local community groups,

setting out the nature and effect of the proposal and that objections may be made by the bodies to whom the notice has been given.

2.4. Where, having made all reasonable efforts to do so, the USP is unable to contact any of the bodies listed in sub-paragraphs (a), (b) or (c) of paragraph 2.3, the USP may ask the local planning authority to forward the notice of its proposal to the relevant body or bodies.

2.5 The USP shall not bring its proposal into effect if it has received any written objection to the proposal by any of the bodies listed in paragraph 2.3 within the period ending 42 days after the day on which notice was given. Any written objection given must state that it is an objection to the proposal and must provide reasons for the objection.

Cash Payment

2.6 The USP shall ensure that at least one Public Call Box providing Call Box Services at a Site shall offer cash payment facilities, except in the case of existing Sites consisting of a Public Call Box which, for historical crime-related reasons, has already had the cash payment option removed.

Request for New Public Call Boxes

2.7 The matters that the USP should take into account in considering a request received under paragraph 3.3 of the Condition are as follows -

- (i) the size of the community which is said to require the provision of a new Public Call Box and related Call Box Services;
- (ii) the quality of housing existing in the community in sub-paragraph (i); and
- (iii) the distance from an existing Site to the proposed new Site.

2.8 In relation to each of the matters specified in paragraph 2.7 the USP shall allocate a score to the proposal as appropriate by reference to each of the three matters set out in paragraph 12 and shall decide whether or not to grant the request on the basis of the total score. The available scores are as follows-

Size of community	Score	Housing type	Score	Access to existing PCB	Score
Less than 100	1	Quality private	0	Within 5-10 mins walk	1
100-200	2	General private	2	Within 10-15 mins walk	3
200-500	3	Private rented or multi-occupancy	4	No provision within 1 mile	4
500 plus	4	Good social housing	4	No provision within 3 miles	5
		Poor social housing	6	No provision within 6 miles	6

2.9 Where the total score is ten or more the USP shall grant the request for a new Public Call Box and related Call Box Services. Except in exceptional circumstances where the total score is eight or less the USP shall not grant the

request. Where the total score is nine the USP shall give due consideration to the request and shall grant the request if appropriate.

David Albert Edmonds
Director General of Telecommunications

22 July 2003

Annex C

The specific universal service condition on provision of call box services (condition 3)

- 3.1 BT shall ensure the adequate provision of Public Call Boxes and Call Box Services throughout the UK (excluding the Hull Area) in order to meet the reasonable needs of End-Users in terms of geographical coverage, the number of Public Call Boxes and the quality of Call Box Services, and in accordance with any relevant direction made under paragraph 3.4.
- 3.2 Where BT proposes to remove or re-site any of its Public Call Boxes, and/or cease to provide Call Box Services, where such removal, re-siting or cessation of provision would result in the complete removal of Public Call Boxes and/or Call Box Services from a Site³, BT may only do so in accordance with any relevant direction made under paragraph 3.4.
- 3.3 Where BT has received a request for the provision of a new Public Call Box and related Call Box Services in order to meet the reasonable needs of a local community, BT shall consider such a request in accordance with any criteria set out in any relevant direction made under paragraph 3.4.
- 3.4 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying:
- (a) the geographical coverage of Public Call Boxes, the number of Public Call Boxes and the quality of Call Box Services required to meet the reasonable needs of End-Users;
 - (b) the process to be followed prior to the removal or re-siting of a Public Call Box or the cessation of any Call Box Services;
 - (c) the matters to be taken into account in considering a request received under paragraph 3.3; or
 - (d) any other matter relating to BT's obligations under paragraphs 3.1, 3.2 and 3.3.
- 3.5 Unless the Director consents otherwise, BT shall provide Call Box Services on the basis of uniform prices throughout the UK except for the Hull Area.

³ Defined in Part 1 ('Definitions and Interpretation of this Schedule') as follows: "Site", in relation to a Public Call Box, means any area within a walking distance of 100 metres from that Public Call Box'.
