

CONTINUATION NOTICE TO KINGSTON COMMUNICATIONS (HULL) PLC UNDER PARAGRAPH 9 OF SCHEDULE 18 TO THE COMMUNICATIONS ACT 2003

Notice that condition 66, set out in Schedule 1 to this notice, will have effect from 25th July 2003

1. The Director General of Telecommunications ('the Director'), in accordance with Paragraph 9 of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to Kingston Communications (Hull) Plc ('the Licensee') that condition 66 set out in the licence granted by the Secretary of State for Trade and Industry on 30 November 1987 to the Licensee under section 7 of the Telecommunications Act 1984 ('the Original Licence') will continue to have effect from 25th July 2003 as modified and to the extent set out in Schedule 1 ('the Continued Provision').
2. The Director considers, for the reasons set out in the statement which the Director will publish, that the Continued Provision set out in Schedule 1 to this notice, corresponds to a provision that the Director has power to include in SMP Conditions and therefore may be continued in accordance with Paragraph 9(4) of Schedule 18 to the Act.
3. The Director considers that the Continued Provision which relates to SMP Apparatus Conditions corresponds to the market listed in Schedule 2 to this notice, which is the market by reference to which the Director would have to set SMP Apparatus Conditions to replace the Continued Provision.
4. The modifications set out in the Continued Provision are made:
 - a) to secure that the Continued Provision continues to have effect whilst this notice is in force; and, as appropriate,
 - b) to ensure that a requirement of the Original Licence must continue to be met for so long as this notice remains in force.
5. Any directions, determinations, consents and other provisions made by or under the Original Licence which have been given or made for the purposes of the Continued Provision and, in accordance with Paragraphs 9(8)(b) and (c) of Schedule 18 to the Act, are to remain in force for so long as this notice is in force.
6. This notice shall continue to have effect until the Director has given a further notice to the Licensee in accordance with Paragraph 9 of Schedule 18 to the Act that this notice shall cease to have effect.
7. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this notice, headings and titles shall be disregarded.

NEIL BUCKLEY
POLICY PROJECT DIRECTOR

A person duly authorised by the Director General of Telecommunications pursuant to paragraph 8 of Schedule 1 to the Telecommunications Act 1984

23 July 2003

Schedule 1

In accordance with the continuation notice, the conditions of the Licence set out in this Schedule will continue to have effect as modified and to the extent set out below (“the Continued Provisions”).

Interpretation

1. In this Schedule, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them. Expressions cognate with those referred to in this Schedule shall also be construed accordingly. For the purposes of interpreting this Schedule, headings and titles shall be disregarded.
2. The Interpretation Act 1978 shall apply for the purposes of interpreting this Schedule as if it were an Act of Parliament.
3. For the purpose of interpreting the Continued Provisions in this Schedule the following definitions shall apply:

“Applicable Systems” means telecommunications systems of every description within the Hull Area provided that a system (“the System”) is an Applicable System only to the extent it satisfies each of the following conditions:

- (a) the System is one by means of which Messages are conveyed or are to be conveyed:
 - (i) from one Network Termination Point to another such Point;
 - (ii) from a Network Termination Point to another place which is neither a Network Termination Point nor a Call Office or from such a place to such a Point;
 - (iii) between a place which is neither a Network Termination Point nor a Call Office and another such place where their conveyance is not by way of provision of a service to another person; or
 - (iv) between a Call Office and any other place,

but in any case not beyond a Network Termination Point;

- (b) none of the apparatus comprised in the System is Relevant Terminal Apparatus installed on premises occupied by a person to whom there are provided telecommunications services by means of the System;

“Approved Apparatus” means in relation to any system apparatus approved under S.22 of the Telecommunications Act 1984 or which meets the appropriate essential requirements of regulation 4 of the RTTE Regulations;

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

“Condition “ means a Continued Provision in this Schedule;

“the Hull Area” means the defined “Licensed Area” in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

“Integrated Services Digital Network” (ISDN) means a network evolved from the telephony integrated digital network that provides for end-to-end digital connectivity to support a wide range of services, including voice and non-voice services, to which users have access by a limited set of standard multi-purpose customer interfaces;

“Interested Parties” means those persons (if any), other than the Licensee, with whom, in any particular case, the Director is required or considers it appropriate to consult;

“Licence” means the Continued Provisions in this Schedule;

“Licensee” means Kingston Communications (Hull) Plc;

“Message” means anything falling within the following:

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus;

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

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

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

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

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

“Network Termination Point” means any point:

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

“Relevant Terminal Apparatus” means:

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

"RTTE Regulations" means the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 as amended by the Radio Equipment and Telecommunications Terminal Equipment (Amendment) Regulations 2003;

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

“Telecommunication Apparatus” means apparatus construed or adapted for use –

- (a) in transmitting or receiving:
 - (i) speech, music and other sounds;

- (ii) visual images;
- (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (iv) signals serving for the actuation or control of machinery or apparatus

which is to be or has been conveyed by means of a telecommunications system; or

- (b) in conveying for the purposes of such a system, anything falling within paragraphs (i) to (iv) above.

and for the purposes of this definition:

- (1) apparatus is connected to a telecommunication system if it is being used, or is installed or connected for use –

- (a) in transmitting or receiving anything falling within paragraphs (i) to (iv) above which is to be or has been conveyed by means of that system; or
- (b) in conveying, for the purposes of that system, anything falling within those paragraphs;

and reference in this sub-section (1) to anything, falling within paragraphs (i) to (iv) shall include references to electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy;

- 2) the connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection if that other telecommunication system or that apparatus would not be so connected but for its connection to another telecommunication system;

- (3) “convey” includes transmit, switch and receive and cognate expressions shall be construed accordingly; and

- (4) references to the supply of telecommunication apparatus do not include the making available of apparatus comprised or to be comprised in any of the Applicable Systems.

“Telecommunication Service” means any of the following, that is to say –

- (a) a service consisting in the conveyance by means of a telecommunication system of;
 - (i) speech, music and other sounds;

- (ii) visual images
 - (iii) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
 - (iv) signals serving for the actuation or control of machinery or apparatus;
- (b) a directory information service, that is to say, a service consisting in the provision by means of a telecommunication service of directory information for the purpose of facilitating the use of a service falling within paragraph (a) above and provided by means of that system; and
 - (c) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication service.

and for the purposes of this definition “convey” includes transmit, switch and receive and cognate expressions shall be construed accordingly.

“Telecommunication System” means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, of-

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus.

and for the purposes of this definition:

- (1) telecommunication apparatus which is situated in the United Kingdom and
 - (a) is connected to but not comprised in a telecommunication system; or
 - (b) is connected to and comprised in a telecommunication system which extends beyond the United Kingdom.

shall be regarded as a telecommunication system and any person who controls the apparatus shall be regarded as running the system.

- (2) a telecommunication system is connected to another telecommunication system if it is being used, or is installed or connected for use, in conveying

anything falling within paragraphs (a) to (d) above which is to be or has been conveyed by means of that other system; and

(3) the connection to a telecommunication system of any other telecommunication system or any apparatus shall not be regarded as a connection if that other telecommunication system or that apparatus would not be so connected but for its connection to another telecommunication system.

4. Subject to paragraph 5 below, if the Director is considering whether a determination, direction or consent under any Condition in this Licence is appropriate, he shall notify the Licensee and any Interested Parties of his proposed decision or the options which he is considering, and his reasons, and give them a reasonable opportunity to make representations. On making and refusing a determination or direction or giving or refusing consent, he shall notify the Licensee and Interested Parties of the determination, direction or consent or refusal, as the case may be, and his reasons.
5. Paragraph 4 does not apply in relation to any determination, direction or consent the procedure for which is otherwise set out in any other enactment.

Exceptions and Limitations on Obligations in the Continued Provisions

6. Unless the context otherwise requires the Licensee's obligations have effect subject to the following exceptions and limitations.
7. The Licensee is not obliged to do anything which is not practicable.
8. The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under this Licence if and to the extent that the Licensee is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment owing to circumstances beyond the control of the Licensee, by the act of any national authority, local authority or international organisation or as the result of fire, flood, explosion, accident, emergency, riot or war.
9. The obligation to provide any telecommunication service under this Licence shall not apply:
 - (a) where there is no reasonable demand for it;
 - (b) where the provision of the service requested would expose any person engaged in its provision to undue risk to health or safety;
 - (c) where the Licensee is unable to obtain (either because it has not been developed or for some other reason beyond the Licensee's control) anything necessary to provide a service of the quality or standard required by the person who requests the provision of the service and, in the event of dispute, the Director's decision as to whether anything is necessary shall be final;

- (d) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in which the apparatus necessary to provide that service in that area has not been installed (or in which the installation of such apparatus has not been completed) or as the case may be such apparatus has not been adapted or modified to make it capable of providing the service of the kind requested or the trained manpower necessary to provide the service is not available in that area, provided that in every case where the Licensee declines to provide a service to which this sub-paragraph relates it shall have published, or furnished to the Director, or within 28 days (or such longer period as the Director considers reasonable) following receipt by it of the request that service be provided shall have furnished to the Director, proposals for:
 - (i) progressively installing or completing the installation or the adaptation or the modification of such apparatus; or
 - (ii) the allocation of the trained manpower,

necessary for the provision of that service in that area and the Director has not determined that those proposals are unreasonable or are not being effectively carried out; or
- (e) where the Licensee notifies the Director that it is not reasonably practicable in all the circumstances for the Licensee to provide the service requested at the time or place demanded and the Director agrees.
- (f) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in an area in which the demand or the prospective demand for the service is not sufficient, having regard to the revenue likely to be earned from the provision of the service in that area, to meet all the costs reasonably to be incurred by the Licensee in providing the service, including:
 - (i) the cost of apparatus necessary for the provision of the service there;
 - (ii) the cost of installing, maintaining and operating such apparatus for the purpose of providing the service there; and
 - (iii) the cost of the trained manpower necessary to provide the service there; or
- (g) where the Licensee notifies the Director that it is not reasonably practicable in all the circumstances for the Licensee to provide the service requested at the time or place demanded and the Director agrees.

10. The Licensee shall not be obliged to connect, or to keep connected to the

Applicable Systems, or to permit to be so connected or kept connected any telecommunication system or telecommunication apparatus or to provide any telecommunication services or to permit the provision of any service if the person to or for whom that is done or is to be done:

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

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

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

13. Paragraphs 6 to 12 shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any Condition.

The Continued Provision

Additional Conditions applicable to Kingston Communications (Hull) plc

CONTROL OF HARD-WIRED AND OTHER TELEPHONE RENTALS

66.1 The Licensee shall ensure that no periodic or other charge in respect of renting from the Licensee telephone apparatus to which paragraph 66.2 applies increases by more than the amount of the change in the retail prices index (as so defined) in each period of 12 months ending on 30 June.

66.2 This paragraph applies to telephones, other than telephones described in paragraph 66.3 below (“the excepted telephones”), which are not capable of being connected to the Licensee’s Applicable Systems at a Network Termination Point by means of a fitted plug which complies with British Standard number 6312: 1985 as published on 28 February 1985, for example, telephones which are only capable of being connected to those Systems by means of hard-wiring or round-pin plugs.

66.3 The excepted telephone are:

- (a)** ISDN telephones;
- (b)** telephones which are connected to the Applicable Systems by means of a single line PBX; and
- (c)** telephones which are connected by a means other than a plug of the kind described in paragraph 66.2 above for the purposes of ensuring safety in a hazardous environment.

Schedule 2

The Director considers, that the Continued Provision set out in this notice corresponds to the following market which is the market by reference to which the Director would have to set SMP Apparatus Conditions to replace the Continued Provision.

Continued Provision	Corresponding market
Condition 66	Supply of Hard-Wired Telephones