

**Final Order under section 16 of the
Telecommunications Act 1984**

Condition 21.3 of 1st Rate Telecom's Licence

20 May 2003

Contents

Final order	3
Explanatory memorandum	7

FINAL ORDER UNDER SECTION 16 OF THE TELECOMMUNICATIONS ACT 1984

Condition 21.3 of 1st Rate Telecom's Licence

WHEREAS:

1. On 8 February 2002, the Secretary of State granted a class licence to run branch systems to provide telecommunications services (the "Licence") to all persons, with certain exceptions, under section 7 of the Telecommunications Act 1984 (the "Act") for the running of telecommunication systems authorised by the Licence (the "Applicable Systems");
 2. 1st Rate Telecom Limited provides by means of its Applicable Systems telecommunication services under the Licence ("the Licensee");
 3. Condition 21.2 of the Licence provides that the Licensee shall adopt a Numbering Plan for such Numbers as the Director General of Telecommunications (the "Director") may allocate to it from time to time in accordance with the National Numbering Conventions (as amended by the Director from time to time) (the "Conventions"). Except where the Director agrees otherwise, the Numbering Plan shall be consistent with the Conventions;
 4. The Conventions for the United Kingdom, Issue 6, 7 May 2003 are a set of principles and rules relating to the use and management of numbers from the Specified Numbering Scheme and govern the specification and application of the Specified Numbering Scheme and licensees' Numbering Plans;
 5. General Condition 5.1(b) of the Conventions provides that "the person originally allocated numbers shall be responsible for them. This does not prevent that recipient sub-allocating numbers, provided that the sub-allocation is still for the use specified in the original application and in accordance with the Conventions";
 6. Convention A5.1 of the Conventions provides that the 07 range has been designated for "find-me-anywhere" services. These are services which enable end users to be contacted, whatever their location, where the call charge is not distance dependent. Convention A5.3 provides that "the only services allowed to be used for the 070 range shall be Personal Numbering Services, which enable end users to be called using a single telephone number and to receive those calls at virtually any telephone number, including mobile numbers". The Conventions provide that the 070 range shall not be used for Premium Rate Services and Convention A5.5 provides that any person to whom The Director has allocated 070 numbers shall not share with end-users any revenue obtained from providing a Personal Numbering Service;
-

7. "Personal Numbering Service" is defined in the Glossary to Issue 6 of the Conventions (dated 7 May 2003) and means a service based on number translation that enables users to be called, using a single personal telephone number, and to receive those calls at almost any telephone number, including mobile numbers. Personal numbers are suitable for end users who habitually move location. For the avoidance of doubt, personal numbers shall not be used for Premium Rate Services;
 8. Convention A7.1 of the Conventions provides that the 09 range has been designated for Premium Rate Services and broadband services. Convention A7.2 provides that Premium Rate Services are normally expected to have the following characteristics: they are paid for through the telephone bill of a subscriber; they are charged for at rates above Special Services in the 08 ranges; the revenue from the call is shared between the operator and provider of the service; and they are not 'find-me-anywhere' services;
 9. "Premium Rate Services" are defined in the Glossary to Issue 6 of the Conventions (dated 7 May 2003) as services that are paid for through the telephone bill of a subscriber, and charged at rates above those for Special Services. The revenue for a PRS call may be shared between the operator and the provider of the service;
 10. In particular, Convention A7.1 provides that numbers in the 091 sub-range are designated for Premium Rate Non-Content Services (as defined in the Conventions). Premium Rate Non-Content Services are Premium Rate Services which are not Premium Rate Content Services (as defined in the Conventions). The Director considers virtual chat services to be a form of content. Such services are not, therefore, considered to be Premium Rate Non-Content Services;
 11. Condition 21.3 of the Licence requires that the Licensee shall install, maintain and adjust its switched Applicable Systems so that those Systems route Messages and otherwise operate in accordance with the Numbering Plan (and therefore the Conventions);
 12. The Director is satisfied that the Licensee has in the past provided access to and in the absence of this final order is likely again to provide access to, virtual chat services on its 070 numbers. Thus, in this respect, the Director is satisfied that Licensee has failed to operate in accordance with its Numbering Plan and therefore the Conventions and is likely to fail again to operate in accordance with its Numbering Plan and therefore the Conventions;
 13. The Director is further satisfied that the Licensee has in the past provided access to and in the absence of this final order is likely again to provide access to, virtual chat services on its 091 numbers. Thus, in this respect also the Director is satisfied that the Licensee has failed to operate in accordance with
-

its Numbering Plan and therefore the Conventions and is likely to fail again to operate in accordance with its Numbering Plan and therefore the Conventions;

14. Accordingly, on the information presently available to him, the Director is satisfied that the Licensee's past failure to ensure that its Applicable Systems route Messages and otherwise operate in accordance with its Numbering Plan means that the Licensee contravened Condition 21.3 of the Licence. Further, the Director is satisfied that, given the history of proven complaints, the Licensee is likely again to contravene Condition 21.3 of its Licence;
15. On 27 March 2003 the Director issued to the Licensee a notice under section 17 of the Act of his intention to make a final order against the Licensee in order to secure compliance with that condition; and
16. Having given notice under section 17 of the Act of his proposal to make this final order and having received representations in response to the notice which he has duly considered and taken into account, the Director considers it requisite that a final order be made on the following terms. The Director's reasons for making this final order are detailed in the explanatory memorandum that accompanies, and is published with, this final order.

THEREFORE:

THE DIRECTOR IN EXERCISE OF THE POWERS CONFERRED ON HIM BY SECTIONS 16(1) AND 16(6) OF THE ACT MAKES THE FOLLOWING FINAL ORDER

1. Within 5 working days of **20 May 2003** the Licensee shall ensure that its switched Applicable Systems route Messages and otherwise operate in accordance with its Numbering Plan and therefore the Conventions.
 2. The Licensee shall advise the Director of any proposed future amendments to its Numbering Plan. The Licensee shall demonstrate, to the satisfaction of the Director, that all such amendments would be consistent with the provisions of the Conventions.
 3. This final order shall take effect on **20 May 2003**.
 4. In this final order words or expressions used have, except where the context otherwise requires, the same meaning as in the Act or the Licence.
-

DAVID ALBERT EDMONDS

DIRECTOR GENERAL OF TELECOMMUNICATIONS

20 May 2003

Explanatory memorandum

Summary

1. This issue relates to the use and management of numbers allocated to 1st Rate Telecom Limited by the Director General of Telecommunications (the 'Director') from the Specified Numbering Scheme (the 'Scheme').
2. 1st Rate Telecom is a network operator operating under the class licence to run branch systems to provide telecommunications services (the Licence') granted on 8 February 2002 by the Secretary of State under Section 7 of the Telecommunications Act 1984 ('the Act').
3. 1st Rate Telecom was allocated numbers in the ranges 07049 1xx xxx, 07059 1xx xxx and 07090 1xx xxx by the Director on 9 March 2002. Further allocations in the ranges 07005 1xx xxx and 07021 3xx xxx were made to 1st Rate Telecom on 15 November 2002. Numbers in the 09111 84xxxx range were allocated to 1st Rate Telecom in July 2002.
4. Following an investigation into complaints received regarding services being offered on numbers allocated to 1st Rate Telecom, the Director has concluded, for the reasons described below, that 1st Rate Telecom has acted in breach of Condition 21.3 of the Licence. In the absence of this final order, the Director is further of the view that, for the reasons described below, 1st Rate Telecom is likely again to be in breach of Condition 21.3 of the Licence. The final order requires 1st Rate Telecom to comply with Condition 21.3 of the Licence at all times.
5. The Director published a Notice under Section 17 of the Act on 27 March 2003, setting out his intention to issue the final order and giving interested parties an opportunity to comment on his proposals. The deadline for comments was 30 April 2003.
6. The Director has received representations from 1st Rate Telecom, the complainant and ICSTIS. Having considered these representations, the Director considers, for the reasons described below, that it is requisite for him to make the final order.

The legal background

7. Condition 21.2 of the Licence requires that the licensee adopt a Numbering Plan for any Numbers that are allocated to it by the Director. It further provides that this Numbering Plan must be consistent with the National Numbering Conventions (as amended by the Director from time to time) (the 'Conventions').
 8. The latest version of the Conventions (Issue 6) came into force on 7 May 2003 (www.oftel.gov.uk/publications/numbering/2003/cons0503.htm). Issue 6 of the Conventions replaced Issue 5 (which came into force on 3 March 2003), which in
-

turn replaced Issue 4 (which came into force on 1 March 2002), but there were no changes to the relevant provisions for the purposes of this final order. Conventions A5 and A7 and General Convention 5 remain the same in terms of substance. The Conventions set out the principles and rules relating to the management and use of numbers allocated to Operators by the Director.

9. General Condition 5.1(b) of the Conventions provides that “the person originally allocated numbers shall be responsible for them. This does not prevent that recipient sub-allocating numbers, provided that the sub-allocation is still for the use specified in the original application and in accordance with the Conventions.”

10. Convention A5 sets out the specific rules relating to the 07 number range. Convention A5.1 provides that the 07 range has been designated for “Find-me-anywhere” services. These are services that enable end-users to be contacted, whatever their location, where the call charge is not distance dependent.

11. Convention A5.3 states that: “the only services allowed to be used for the 070 range shall be Personal Numbering Services, which enable end users to be called using a single telephone number and to receive those calls at virtually any telephone number, including mobile numbers.”

12. “Personal Numbering Service” is defined in the Glossary to the Conventions as a type of service which is, “based on number translation that enables users to be called, using a single personal telephone number, and to receive those calls at almost any telephone number, including mobile numbers. Personal numbers are suitable for end users who habitually move location. For the avoidance of doubt, personal numbers shall not be used for Premium Rate Services”.

13. Convention A5.5 provides that, “any person to whom Oftel has allocated 070 numbers (the ‘original 070 allocatee’) shall not share with end users any revenue obtained from providing a Personal Numbering Service. Where the original 070 allocatee sub-allocates 070 numbers to persons other than end users, such as to a provider of Personal Numbering Services or another operator, that original 070 allocatee shall, prior to making such a sub-allocation (and without prejudice to the generality of his obligations under Convention 5.1), ensure that such persons undertake to procure that revenue obtained from providing a Personal Numbering Service is not shared with end users.”

14. Convention A7 sets out the specific rules for Premium Rate Services. In particular, Convention A7.1 provides that the 09 range has been designated for Premium Rate Services, both with and without content, and broadband services. Numbers in the 090 sub-range have been designated for Premium Rate Content Services. Numbers in the 091 sub-range have been designated for Premium Rate Non-Content Services.

15. Premium Rate Services are defined in Convention A7.2 as normally having the following characteristics:

- (a) they are paid for through the telephone bill of a subscriber;
- (b) they are charged for at rates above Special Services in the 08 range;
- (c) the revenue for the call, which comprises the price of the telephone call plus the content, product or service, is shared between the operator and the provider of the service whether directly or indirectly; and
- (d) they are not 'Find-me-anywhere' services.

16. Premium Rate Content Services are defined in Convention A7.3 as “those services which, apart from having the characteristics in Convention A7.2, include a charge for the content of the call or other product or service delivered in the course of, or as a direct consequence of, the call, which charge is in addition to, or forms part of the overall charge for, the telecommunications service which delivers that content, product or service”.

17. Premium Rate Non-Content Services are defined in Convention A7.4 as being those Premium Rate Services which are not Premium Rate Content Services. The Director considers virtual chat services to be a form of content because access to the chat element is through a designated portal which the caller pays for in the course of, and as a direct consequence of, the call, in addition to the charge for the telecommunications service which delivers that service. Such services are not, therefore, Premium Rate Non-Content Services.

18. On 25 October 2002 the Director requested a copy of 1st Rate Telecom's Numbering Plan. The Director did not consider the Numbering Plan provided by 1st Rate Telecom on 8 November 2002 to be adequate for the purposes of Condition 21.2 of the Licence and requested that the Numbering Plan be revised. The Numbering Plan provided by 1st Rate Telecom on 7 February 2003 in response to that request was consistent with the Conventions. In particular, the Numbering Plan recognises at paragraph A5.3 that “...the only services allowed to be used for the 070 range shall be Personal Numbering Services...” and at paragraph A7.4 that “Premium Rate Non-Content Services in the 091 sub-range are those Premium Rate Services which are not Premium Rate Content Services.” 1st Rate Telecom confirmed in an e-mail of 8 November 2002 that it would be running “weekly checks on the termination numbers to ensure there [sic] destinations meet the numbering plan regulations.”

19. Condition 21.3 requires the licensee to install, maintain and adjust its switched Applicable Systems so that those Systems route Messages and otherwise operate in accordance with the Numbering Plan (and therefore the Conventions).

The complaint

20. On 24 October 2002, a service provider who wishes to remain anonymous (the 'complainant') made a complaint to the Independent Committee for the Supervision of Standards of Telephone Information Services ('ICSTIS') that its virtual chat service was, without its consent, being mapped on to by another operator using personal (070) numbers.

21. The complainant's virtual chat service is run on numbers in the 0871x xxx xxx range and is charged for at 10ppm. The recorded introductory message provided in respect of the virtual chat service specifies clearly that the charge for the service is 10ppm. Virtual chat services are currently permitted to be run on 0871 numbers and revenue from calls may be shared with service providers.

22. The two numbers that the complainant complained to ICSTIS about, 07090 101010 and 07090 100100, were allocated to 1st Rate Telecom on 9 March 2002. Charges for calls to these two numbers vary depending on the time of day and day of the week but in general customers are charged at 37.5ppm during the day, 25ppm during the evening and 12.5ppm at weekends. Thus, when callers dialled these two numbers they were routed through to the virtual chat service and they received a message that they were being charged at 10ppm but in fact they were being charged at a higher rate.

23. ICSTIS took action for breach of the ICSTIS Code of Practice against the service provider (a Mr Adams Hill) to whom 1st Rate Telecom claimed to have sub-allocated the numbers (see ICSTIS Report number 95, page 11 and ICSTIS Report number 96, page 10 available from www.icstis.org.uk/). In addition, ICSTIS required 1st Rate Telecom to bar access to the offending numbers. A copy of the complaint was also passed to the Director as it related to a possible misuse of personal numbers.

24. ICSTIS first referred the complaint to the Director on 25 October 2002, at which point the Director raised the matter with 1st Rate Telecom and requested remedial action. Following further complaints, the Director opened an investigation (case number CW/00589/01/03) on 29 January 2003 to look into a possible breach of the Conventions and therefore the Licence.

The Director's investigation into 070 numbers

25. The Director wrote to 1st Rate Telecom on 25 October 2002, explaining that it appeared to be in breach of the Conventions (and hence its Licence) by allowing the number 07090 101010 that was allocated to it to be used to offer a virtual chat service. The Director explained that he does not consider virtual chat services to be Personal Numbering Services as they do not contain a find-me-anywhere element, as required by Convention A5.

26. On 8 November 2002 1st Rate Telecom advised that 07090 101010 had been sub-allocated to a service provider, Mr Adams Hill. However, on 28 February 2003 1st Rate Telecom subsequently advised the Director that the 070 numbers in the ranges 07090 101010, 07090 151515, 07090 102030, 07090 100100 and 07005 101010 have in fact been sub-allocated to a company called E1 Rentals Ltd, who in turn have sub-allocated 070 numbers to Mr Adams Hill.

27. The Director is of the view that, for the purposes of this investigation, it is not relevant to whom the 070 numbers have actually been sub-allocated. This is because the obligation under General Condition 5.1(b) of the Conventions requires 1st Rate Telecom to ensure that 070 numbers allocated to it are used in compliance with the Conventions. 1st Rate Telecom, as the person originally allocated the numbers in question, remains responsible for those numbers.

28. Further, 1st Rate Telecom's Applicable Systems will continue to be used to route calls to the 070 (and 091) numbers allocated to it, even where some of these numbers have been sub-allocated, for example, to E1 Rentals. 1st Rate Telecom therefore has a continuing responsibility to ensure that the services operated on the sub-allocated numbers are compliant with the Numbering Conventions. Where they are not, 1st Rate Telecom must ensure that the sub-allocatee alters the services so they become compliant. This is because under Condition 21.3 of the Licence, 1st Rate Telecom must at all times ensure that its switched Applicable Systems route Messages and otherwise act in accordance with its Numbering Plan and, therefore, the Conventions.

29. On 25 October 2002 the Director sought assurances that all non-personal numbering services would be migrated away from 070 numbers allocated to 1st Rate Telecom. On 8 November 2002, 1st Rate Telecom provided assurances that "emergency checks" had been carried out to "ensure all virtual chat and any other non-personal numbering services are not in operation on 070 number ranges". On 11 November 2002 calls to 07090 101010 and 07090 100 100 showed that the 1st Rate Telecom appeared to have terminated the virtual chat service on those numbers.

30. However, on 29 January 2003, the complainant made a further complaint to the Director alleging that the 07090 101010 and 07090 100 100 numbers allocated to 1st Rate Telecom were still being used to provide access to the complainant's virtual chat service.

31. On 31 January 2003 the Director again wrote to 1st Rate Telecom and required it to terminate service to the offending numbers and to migrate any other services that did not comply with the Conventions away from 070 numbers. 1st Rate Telecom confirmed on 7 February that "all actions" required by the Director had been carried out.

32. Further to this statement, on 7 February staff of the Director made calls to the 07090 101010 and 07090 100100 numbers to ensure that the virtual chat service

was no longer being provided on these 070 numbers. The calls were routed to a message advising that the virtual chat service had been migrated to 09111 848484.

33. However, on 12 February the Director received a further complaint from the complainant that access to its service was being provided from the number 07005 101010, which is allocated to 1st Rate Telecom.

34. Calls were made to this number on 21 February at 10:35am by staff of the Director from a mobile phone. The calls were connected through to a virtual chat service. Service to this number has, however, now been terminated.

The Director's investigation into 091 numbers

35. As explained at paragraph 32 above, 1st Rate Telecom migrated virtual chat services to its 09111 848484 number.

36. As explained at paragraph 17 above, the Director considers virtual chat services to be a form of content. This means that 1st Rate Telecom was offering a Premium Rate Content Service on an 091 number. However, as explained in paragraph 14 above, 091 numbers should, under the Conventions, be used only for Premium Rate Non-Content Services.

37. The 09111 848484 number was called on 21 February and was at that time being used to provide access to a virtual chat service. Service to the number has, however, now been terminated.

The Director's findings

070 numbers

38. By repeatedly providing access to virtual chat services from 070 numbers allocated to it, the Director is satisfied that 1st Rate Telecom has in the past acted in breach of Convention A5 and General Condition 5 of the Conventions and that unless action is taken it will again act in breach of these Conventions.

39. The Director is of this view because despite the fact that he has explained the provisions of the Conventions in letters to 1st Rate Telecom dated 25 October 2002, 31 January 2003 and 6 March 2003 he has continued to receive complaints about the way in which 1st Rate Telecom uses 070 numbers. Given the history of complaints, 1st Rate Telecom's repeated non-compliance with the Conventions and its apparent lack of an effective monitoring process for the 070 numbers that it sub-allocates, the Director considers it requisite that a final order be issued in order to ensure future compliance with the Conventions.

090 numbers

40. By migrating access to the virtual chat service from some 070 numbers to an 091 number, 1st Rate Telecom was offering a Premium Rate Content Service on a number range designated for Premium Rate Non-Content Services. The Director is therefore satisfied that 1st Rate Telecom was also acting in breach of Convention A7 and General Condition 5 of the Conventions and that unless action is taken it will again act in breach of these Conventions.

41. The Director is of this view because despite the fact that 1st Rate Telecom's Numbering Plan recognises the obligations under the Conventions, he has continued to receive complaints about the way in which 1st Rate Telecom uses numbers allocated to it. Given the history of complaints, 1st Rate Telecom's non-compliance with the Conventions and its apparent lack of an effective monitoring process for the numbers that it sub-allocates, the Director considers it requisite that a final order be issued in order to ensure future compliance with the Conventions.

The breach of the Licence

42. In failing to comply with the Conventions, 1st Rate Telecom has failed to maintain its switched Applicable Systems so that those Systems route Messages and otherwise operate in accordance with its Numbering Plan. The Director is therefore satisfied that 1st Rate Telecom has been in breach of Condition 21.3 of its Licence and in the absence of this final order is likely again to be, in breach of Condition 21.3 of its Licence.

43. The Director is of this view because despite the fact that he has explained the provisions of the Licence in letters to 1st Rate Telecom dated 25 October 2002, 31 January 2003 and 6 March 2003 he has continued to receive complaints about the way in which 1st Rate Telecom uses numbers allocated to it. Given the history of complaints and 1st Rate Telecom's repeated non-compliance with Condition 21.3 of its Licence, the Director considers it requisite that a final order be issued.

44. The Director has a duty under Section 16 of the Telecommunications Act 1984 to enforce any breach of a licence condition (to the extent that this duty has not been disapplied under Section 16(5)).

45. Ensuring that personal numbers and premium rate numbers are used appropriately provides greater clarity to consumers as to the type of services that a dialling code is likely to provide access to and to the level of charges that they can expect to face when calling such numbers.

46. The Director considers there to be clear evidence in this case of consumers being misled as to the cost of calls they were making. The virtual chat service was advertised as being charged for at 10ppm. When accessed from the 0871x xxx xxx numbers allocated to the complainant it was charged for at this rate. However,

when accessed from 070 and 091 numbers allocated to 1st Rate Telecom, calls were charged at far higher rates (as detailed in paragraph 22).

47. On 27 March 2003, the Director issued a Notice under Section 17 of the Act giving notice that he proposed to make a final order under Section 16(1) of the Act for the purposes of securing compliance with the Licence granted to 1st Rate Telecom. A copy of this Notice is available on OfTel's website at: www.oftel.gov.uk/publications/licensing/2003/frt0303.htm. Interested parties were given until 30 April 2003 to make representations about or objections to the proposed final order.

Representations from the parties

48. The Director has received representations from 1st Rate Telecom, the complainant and ICSTIS.

1st Rate Telecom

49. 1st Rate Telecom raised objections to the Director's proposals on the grounds that, further to correspondence with the Director, it has carried out all numbering requests made by the Director and its contract with E1 Rentals has been terminated. 1st Rate Telecom has advised that it now only deals directly with the providers of telecommunications services and it has offered to inform the Director of all future allocations of 070 numbers.

The complainant

50. The complainant welcomed the Director's proposals.

ICSTIS

51. ICSTIS agreed with the Director's proposed course of action, adding that it was "vitally important that the integrity of the numbering conventions are adhered to at all times by companies wishing to operate telecommunications services."

Assessment of responses

52. The Director notes 1st Rate Telecom's comments that it has carried out all numbering requests made by the Director. However, given the history of complaints against 1st Rate Telecom (as detailed in paragraphs 39, 41 and 43 above) the Director remains of the view that it is requisite that a final order be made, since in the absence of such an order, it is likely that 1st Rate Telecom will again breach the Licence. 1st Rate Telecom has not provided any information which has altered the Director's views in this respect.

53. The Director is of the view that it is 1st Rate Telecom's responsibility to ensure that numbers allocated to it, and which it subsequently sub-allocates, are used in

accordance with the Conventions. 1st Rate Telecom has failed to provide the Director with adequate assurances that such numbers will, in future, be used in accordance with the Conventions.

54. Given the history of complaints, the Director remains of the view that the 1st Rate Telecom appears to lack of an effective monitoring process for the numbers that it sub-allocates. As a result of this, the Director is of the view that 1st Rate Telecom has in the past been in breach of its Licence and that, in the absence of this final order, it is likely that 1st Rate Telecom will again contravene its Licence.

Conclusions

55. The Director, having regard to all the relevant matters arising from his examination of the complaint referred to above and the representations of the parties considers that it is requisite to issue a final order.

56. The final order requires 1st Rate Telecom to comply with Condition 21.3 of its Licence at all times by ensuring that, within five working days of the final order taking effect, its switched Applicable Systems route Messages and otherwise operate in accordance with its Numbering Plan and therefore the Numbering Conventions. The final order further requires 1st Rate Telecom to advise the Director of any proposed future amendments to its Numbering Plan and to demonstrate, to the satisfaction of the Director, that any such amendments would be consistent with the provisions of the Conventions. This will allow the Director to monitor whether 1st Rate Telecom is compliant with the Conventions and the Licence.
