

Draft Determination: Controlled Premium Rate Services

11 January 2002

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Summary

S.1 This document contains a draft determination relating to the provision of Controlled Premium Rate Services under sub-paragraph 22.9 of the proposed Condition 22 of all Public Telecommunications Operator (“PTO”) licences and under sub-paragraph 26.9 of the proposed Condition 26 of the class licences to run branch systems to provide Telecom munications Services (“TSL”) and to provide International Simple Voice Resale Services (“ISVR”).

S.2 The effect of the determination under the above-mentioned sub-paragraphs 22.9 and 26.9 will be to determine the amount for the charge of the Call by means of which the service is obtained and/or the rate according to which such Call is charged for the purposes of the proposed sub-paragraphs 22.11(a)(iii)(A) of all PTO licences and 26.11(a)(iii)(A) of all TSL and ISVR licences.

S.3 It should be noted that the making of the final determination will, of course, be subject to the outcome of the statutory public consultation, and whether the proposed modifications are finally made to PTO licences, and the TSL and ISVR licences successfully revoked and re-granted. Accordingly, the consultation on the draft determination should not be taken to fetter the Director General’s discretion as to the making of the proposed modifications themselves, nor the Secretary of State’s discretion as to the revoking and re-granting of the TSL and ISVR licences.

DRAFT DETERMINATION RELATING TO THE PROVISION OF CONTROLLED PREMIUM RATE SERVICES UNDER SUB-PARAGRAPH 22.9 OF THE PROPOSED CONDITION 22 OF ALL PUBLIC TELECOMMUNICATIONS OPERATOR (“PTO”) LICENCES AND UNDER SUB-PARAGRAPH 26.9 OF THE PROPOSED CONDITION 26 OF THE CLASS LICENCES TO RUN BRANCH SYSTEMS TO PROVIDE TELECOMMUNICATIONS SERVICES (“TSL”) AND TO PROVIDE INTERNATIONAL SIMPLE VOICE RESALE SERVICES (“ISVR”)

WHEREAS:

(A) the Secretary of State for Trade and Industry (the “Secretary of State”) has granted under section 7 of the Telecommunications Act 1984 as amended by the Electronic Communications Act 2000 (the “Act”) the following licences:

- (i) all those licences granted to particular persons for the running of telecommunications systems which the Secretary of State has designated by order under section 9 of the Act as public telecommunications systems, which shall be taken to include licences granted to British Telecommunications plc (see S.I. 1999 No. 2453), Kingston Communications (Hull) PLC (see S.I. 1999 No. 2455) and any other persons operating under the fixed voice telephony and international facilities operator licences (see S.I. 1999 No. 2451), the cable and local delivery operator licences (see S.I. 1999 No. 2454), and the mobile licences (see S.I. 1999 No. 2452), and any other such licences granted after the coming into force of this Determination and the aforementioned Regulations and subject to substantially the same terms and conditions as the aforementioned licences (the “PTO licences”);
- (ii) the Class Licence to run Branch Systems to provide Telecommunications Services granted on [**note:** date of grant to be inserted when known as this new Class Licence is currently being consulted upon by the Secretary of State - see notice under section 7(12) and (13) of the Act on 1 October 2001] (the “TSL”);
- (iii) the Class Licence to run Branch Systems to provide International Simple Voice Resale Services granted on [**note:** date of grant to be inserted when known as this new Class Licence is currently being consulted upon by the Secretary of State - see notice under section 7(12) and (13) of the Act on 1 October 2001] (the “ISVR”);

(B) Condition 22.9 of the PTO licences provides that, for the purposes of ascertaining whether a service is a Controlled Premium Rate Service, the Director General of Telecommunications (the “Director General”) shall determine from time to time, in accordance with the procedure set out in paragraph 22.10, an amount for the charge of the Call by means of which the service is obtained or the rate according to which such Call is charged or both which, when exceeded, means that sub-paragraph 22.11(a)(iii)(A) of the definition of Controlled Premium Rate Services is satisfied.

(C) Condition 22.9 also provides that in making such a determination, the Director General shall have regard to the prevailing standard rates for premium rate calls of

the Licensee and other licensed operators providing Controlled Premium Rate Services from time to time.

(D) by way of a Notice which was published on 12 October 2001, and in accordance with the procedure detailed in sub-paragraphs (a) and (b) of Condition 22.10, the Director General notified all Licensees, together with all interested parties and the Independent Committee for the Supervision of Standards of Telephone Information Services ('ICSTIS'), that he was minded to set the amount for the charge of the Call by means of which the service is obtained at 10 pence and the rate according to which such Call is charged at 10 pence per minute. In other words, the amount for the charge of the Call by means of which the service is obtained must exceed 10 pence or the rate according to which the such Call is charged must exceed 10 pence per minute in order to satisfy the definition of Controlled Premium Rate Services as detailed in sub-paragraph 22.11(a)(iii)(A) of the PTO licences and sub-paragraph 26.11(a) (iii)(A) of the TSL and ISVR licences, respectively;

(E) in accordance with sub-paragraphs (c), (d) and (e) of paragraph 22.10, the Director allowed a period of 28 days in which representations on the proposals set out in the above-mentioned Notice could be made, published those representations (except where a representation was confidential) and allowed a further period of 14 days in which any observations on the representations could be made;

(F) Condition 26 of Schedule 1 to the TSL and ISVR licences makes provision in terms identical for the purposes of this determination to those made by Condition 22 of the PTO licences, as set out above.

(G) the Director General is now minded to set the amount for the charge of the Call by means of which the service is obtained at 10 pence and the rate according to which such Call is charged at 10 pence per minute. The Director General has had regard to the prevailing standard rates for premium rate calls of the licensee and other licensed operators providing controlled premium rate services from time to time;

(H) in making this determination, the Director General has taken into account representations and observations received as part of the consultation process referred to in paragraph E above, and the matters described in the Explanatory Memorandum to this draft Determination; and

NOW, THEREFORE, THE DIRECTOR GENERAL, PURSUANT TO CONDITION 22.9 OF THE PTO LICENCES AND CONDITION 26.9 OF THE TSL AND ISVR LICENCES, HEREBY DETERMINES THAT:

the amount for the charge of the Call by means of which the service is obtained must exceed 10 pence or the rate according to which such Call is charged must exceed 10 pence per minute in order to satisfy the definition of Controlled Premium Rate Services as detailed in sub-paragraph 22.11(a)(iii)(A) of the PTO licences and sub-

paragraph 26.11(a) (iii)(A) of the TSL and ISVR licences, respectively, with effect from **[time]** today, **[date]**.

DAVID EDMONDS

DIRECTOR GENERAL OF TELECOMMUNICATIONS

11 JANUARY 2002

EXPLANATORY MEMORANDUM

E1. On 14 September 2001 the Director General of Telecommunications (the “Director General”) issued a Notice commencing a statutory public consultation on proposed modifications to the PTO licences in accordance with section 12(2) of the Telecommunications Act 1984 as amended by the Electronic Communications Act 2000 (the ‘Act’). The proposed modifications were to insert a new Condition 22 into the PTO licences and to make minor drafting changes to Condition 23.

E2. On 1 October 2001, the Secretary of State for Trade and Industry (the “Secretary of State”) issued a Notice commencing a statutory public consultation on the proposed revocation and re-grant of the class licences to run branch systems to provide Telecommunications Services (“TSL”) and International Simple Voice Resale Services (“ISVR”) to insert a new Condition 26 in identical terms to that of Condition 22 of the PTO licences (and to make minor drafting changes to Condition 27 of the TSL and ISVR licences).

E3. The new Condition 22 would widen the definition of what type of premium rate services (“PRS”) might be caught by replacing the current definition of ‘Controlled Services’ with the definition of ‘Controlled Premium Rate Services’. In broad terms, only live PRS are currently caught by the former definition. As a result, there is no code of practice governing the provision of PRS other than live PRS (such as recorded PRS) that can be recognised by the Director General.

E4. The reason why the Director General is making the above-mentioned proposal is to strengthen the regulatory regime in the PRS industry, so that the provision of a potentially larger category of PRS (other than simply live PRS) could be governed by a code of practice recognised by the Director. In this way, the Director General will have more ‘backstop’ powers to require network operators to cut off such services that are not complying with the code of practice administered by the Independent Committee for the Supervision of Standard of Telephone Information Services (ICSTIS) following it making such a request to the Director General, if the Director General considers it appropriate to make such a direction.

E5. The text of the proposed modifications and their effects are set out in full in the Oftel Statement entitled *‘Regulation of Premium Rate Services: Licence Modification’*, which was published on 24 July 2001. The document is available via Oftel’s website www.oftel.gov.uk).

E6. By way of a Notice which was published on 12 October 2001, and in accordance with the procedure detailed in the proposed Condition 22.10 subparagraphs (a) and (b) of the PTO licences and the proposed Condition 26.10 subparagraphs (a) and (b) of the TSL and ISVR licences, the Director General notified all licensees operating under those licences, together with all interested parties and the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), that he was minded to set the amount for the charge of the Call by means of which the service is obtained at 10 pence and the rate according to which such Call is charged at 10 pence per minute. In other words the amount for the charge of the Call by means of which the service is obtained must exceed 10 pence or the rate according to which such Call is charged must exceed

10 pence per minute in order to satisfy the definition of Controlled Premium Rate Services as detailed in sub-paragraph 22.11(a)(iii)(A) of the PTO licences and sub-paragraph 26.11(a)(iii)(A) of the TSL and ISVR licences, respectively.

E7. In proposing that amount, the Director General has had regard to the current prevailing standard rates for premium rate calls of the licensees operating under the PTO licences. The Director General notes that while premium rate calls are available at a rate of less than 10 pence or 10 pence per minute, this is not standard practice, and that the vast majority of premium rate calls would be offered at a price in excess of 10 pence or 10 pence per minute.

E.8. The Director General has also taken into account representations and observations received as part of the consultation process specified under proposed Conditions 22.10 and 26.10 sub-paragraphs (c) to (e) and outlined in the above-mentioned Notice of 12th October 2001.

E.9. The making of the final determination will, of course, be subject to the outcome of the respective statutory public consultations and whether the proposed modifications are finally made to the PTO licences, and the TSL and ISVR licences successfully revoked and re-granted. The consultation on this draft determination shall not be taken to fetter the Director General's discretion as to the making of the proposed modifications themselves, nor the Secretary of State's discretion as to the revoking and regranting of the TSL and ISVR licences.

Consultation

C1 This draft determination relating to the provision of Controlled Premium Rate Services under sub-paragraph 22.9 of the proposed Condition 22 of the PTO licences, and sub-paragraph 26.9 of the proposed Condition 26 of the TSL and ISVR licences is being made available in this document, together with the Director General's reasons, to all licensees, ICSTIS and all interested parties who have submitted representations and observations on the proposals set out in the above-mentioned Notice of 12th October 2001. In accordance with sub-paragraph (f) of proposed Conditions 22.10 and 26.10, a period of 14 days is being allowed for comment on the draft determination (see below). Having considered any such comments, the Director General will, if appropriate, make the determination and will publish the determination and his reasons for making it in the same way as he published representations and observations made following the publication of the above-mentioned Notice of 12th October 2001. Any comments should be sent to:

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C2 Further copies of this document can be printed from OfTel's website. Paper copies may also be obtained from OfTel's Research and Intelligence Unit. OfTel has arrangements in place with organisations providing transcription services, and large print, Braille and audio cassettes can be made available on request. Copies are also available on computer disc so that stakeholders without Internet access may create their own large print copies.

C3 Comments on the draft determination must arrive at OfTel no later than **28 January 2002**. In the interests of transparency, all non-confidential comments will be published. If any part of your comments is confidential, and not for publication, please include this in a separate annex and ensure that it is clearly marked as confidential. In the interests of transparency, please avoid confidentiality markings wherever possible. It would be helpful if comments could be delivered by e-mail. However, copies may also be posted or faxed to the address above. If any stakeholders are unable to supply their comments in one of these ways they should contact Gavin Daykin to discuss alternatives.

C4 Comments on the draft determination, and the copies of the final determination if made, will be accessible via a link created on the title page of the electronic text of this document. This can be found in the Publications section of OfTel's website under the classification Licensing and Enforcement Actions. Paper copies of comments and of the final determination if made will also be made publicly available in OfTel's Research and Intelligence Unit. Appointments to view written comments in this way, which must be made in advance, may be arranged by phoning: 020 7634 8761 (fax: 020 7634 8946).