

## **SECTION 12 TELECOMMUNICATIONS ACT 1984**

### **MODIFICATION TO ALL PUBLIC TELECOMMUNICATIONS OPERATOR LICENCES**

During the period beginning on 22 June 1984 and ending on 29 August 2001 the Secretary of State for Trade and Industry (the "Secretary of State") has granted licences under section 7 of the Telecommunications Act 1984 ("the Act") to particular persons which the Secretary of State has designated by order under section 9 of the Act as having public telecommunications systems, collectively referred to hereinafter as the "PTO licences".

The Director General of Telecommunications ("the Director"), in accordance with section 12 of the Act, as amended by the Electronic Communications Act 2000, published on 14 September 2001 a notice ("the Notice") stating that he proposed to make the modification specified in the Notice to all PTO licences and setting out its effect, stating the reasons why he proposed to make the modification, and specifying that representations and objections to the proposed modification could be made no later than 12 October 2001.

A copy of the Notice has been sent to every relevant Licensee. A reminder was sent more than seven days ago to every relevant licensee who neither objected nor consented to the making of the proposed licence modification, drawing the attention of that person to the fact that if no objection is received by the Director within seven days he may proceed with the licence modification.

The Director has considered all representations made to him about the modification. No objections to the modification in accordance with the Act were made.

A copy of the Notice was sent by the Director to the Secretary of State for Trade and Industry who has not directed the Director not to make the modification.

Therefore the Director, in exercise of the powers conferred on him by section 12 of the Act, as amended, makes the following modifications to Schedule 1 of all PTO licences:

- (i) Condition 22 ('Controlled Services') shall be deleted in its entirety and shall be substituted by a new Condition 22 ('Controlled Premium Rate Services') which is set out in Annex A attached ; and
- (ii) Condition 23 ('Provision of Special Facilities Relating to Chatline and Message Services') shall be deleted in its entirety and shall be substituted by a new Condition 23 ('Provision of Special Facilities Relating to Chatline and Message Services') which is set out in Annex B attached.

The Interpretation Act 1978 shall apply to this instrument as though it were an Act of Parliament.

**DAVID ALBERT EDMONDS**  
**Director General of Telecommunications**  
**08 February 2002**

## **ANNEX A**

Condition 22 of Schedule 1 to the PTO licences shall be deleted in its entirety and shall be substituted by the following new Condition 22:

### **CONTROLLED PREMIUM RATE SERVICES**

22.1 The Licensee may only provide a Controlled Premium Rate Service in whole or part by means of the Applicable Systems (whether or not Messages comprised in, or resulting from the provision of, such Services, have previously been, or are subsequently conveyed by, any other public telecommunication system) where the Relevant Condition is satisfied.

22.2 The Licensee may only provide a telecommunication service to another person by means of the Applicable Systems by means of which that person, to the knowledge of the Licensee, provides a Controlled Premium Rate Service (whether or not Messages comprised in, or resulting from the provision of, such Services have previously been, or are subsequently conveyed by, any other public telecommunication system) where the Relevant Condition is satisfied.

22.3 The Relevant Condition is that there is in effect at the time the Controlled Premium Rate Service concerned is provided, a code of practice governing the provision of such a Service, which has been recognised by the Director for the purposes of this Condition after consultation with the Licensee and with any body which he considers to be representative of those wishing to provide such Services.

22.4 A code of practice shall only be recognised for the purposes of paragraph 22.3 if the Director is satisfied that:

- (a) its provisions are capable of properly regulating the provision of the Controlled Premium Rate Services to which it relates and, without prejudice to the generality of the foregoing, which provisions may include making adequate provision for compensating those who suffer as a result of the provision of such Services or any description of such Services; and
- (b) adequate arrangements have been made for the constitution (including the arrangements for the funding) of a body of persons to apply and administer the Code (referred to in this Condition as “the Body applying and administering the Code”).

22.5 A code of practice is recognised for the purposes of this Condition where it is specified as such in a determination made by the Director, and the Director may, at any time after such a code is recognised and after giving not less than one month’s notice in writing of his intention to the Body applying and administering the Code, determine that its recognition be revoked if he is satisfied that its provisions are not capable of properly regulating the provision of the Controlled Premium Rate Services to which it relates, or that it is not being properly applied and administered (whether, without prejudice to the generality of the foregoing, due to lack of funding or otherwise).

22.6 For the purposes of this Condition, the Director may recognise a code of practice in relation to any description of Controlled Premium Rate Service or to all Controlled Premium

Rate Services, and the provisions of this Condition shall apply accordingly.

22.7 If:

- (a) a recommendation is made to the Director by the Body applying and administering the Code that any person (including the Licensee) should no longer be permitted or should not be permitted to provide a particular Controlled Premium Rate Service or any Controlled Premium Rate Services (whether or not he is providing it or them when the recommendation is made);
- (b) the Licensee has failed to comply with a recommendation made by the Body applying and administering the Code in accordance with any of the procedures set out in that Code that the Licensee cease to provide, or, as the case may be, shall not provide the relevant Service or Services either itself or to any other person; and
- (c) the Director considers it appropriate,

the Director may direct the Licensee to cease to provide, or, as the case may be, not to provide that person or any other person with any service facilitating or enabling the provision of the relevant Controlled Premium Rate Service or Services or, as the case may be, itself cease to provide, or, as the case may be, not to provide the relevant Controlled Premium Rate Service or Services.

22.8 The Director may determine, subject to such conditions as he thinks fit, that:

- (a) any Controlled Premium Rate Service of any description, or any individually specified such Service provided by a person named in the determination, is not to be treated as a Controlled Premium Rate Service for the purposes of this Condition; and
- (b) any individually specified Controlled Premium Rate Service in respect of which a determination under sub-paragraph (a) above has been made or which is within a description of Controlled Premium Rate Services in respect of which such a determination has been made, is to be treated as a Controlled Premium Rate Service for those purposes notwithstanding such determination,

and where a determination of the kind specified in sub-paragraph (b) above is made the provisions of this Condition shall apply to such a Service from the date specified in the determination.

22.9 For the purposes of ascertaining whether a service is a Controlled Premium Rate Service, the Director shall determine, from time to time, in accordance with the procedure set out in paragraph 22.10 below, 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. In making such a determination, the Director 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.

22.10 Where a determination is made pursuant to paragraph 22.9, the procedure shall be as follows:

- (a) before making the determination, the Director shall serve upon the Licensee a notice informing the Licensee of any amount he proposes to specify in the determination;
- (b) the notice in sub-paragraph (a) above shall be copied to the Body applying and administering the Code and to Interested Parties at the same time as being served upon the Licensee;
- (c) the Licensee, the Body applying and administering the Code and Interested Parties shall be given a period of not less than 28 days in which to make representations;
- (d) the representations made by the Licensee or the Body applying and administering the Code or Interested Parties or any of them, shall be published in such manner as the Director considers appropriate to bring such representations to the attention of the Licensee, the Body applying and administering the Code and Interested Parties (having regard to the wish of the Licensee or such body to keep matters contained in any representation confidential);
- (e) the Licensee, the Body applying and administering the Code and Interested Parties shall be given a further period of not less than 14 days in which to make any observations on the representations which have been published;
- (f) when the Director has considered the representations and any observations made, he shall prepare a draft determination and statement of reasons for that determination and send it to the Licensee, the Body applying and administering the Code and any Interested Party who has submitted representations or observations, or both, giving those persons a period of not less than 14 days within which to comment;
- (g) after considering any comments received, the Director shall make the determination and publish such determination in the same manner he published the representations referred to in sub-paragraph (d) above; and
- (h) the provisions of this Condition shall apply from the date specified in the determination.

22.11 In this Condition:

- (a) subject to paragraph 22.12 below and to any determination made by the Director pursuant to paragraph 22.8 above, a Controlled Premium Rate Service is one (other than a Find-me-anywhere Service) in respect of which:
  - (i) the person responsible for paying the charges for the Call by means of which the Service is obtained is billed by means of his telephone bill for any amount in respect of the provision of the Service;
  - (ii) part of the overall charge paid by that person to the Licensee for the Service, being payment for the content of the Call or other product or service delivered in the course of, or as a direct consequence of, the Call, is passed on by the Licensee, directly or indirectly, to the person providing the Service (or, where that person is

the Licensee himself, to that part of the Licensee's business which provides the Service and is credited with revenue from that part of its business which conveys the Messages comprised in, or resulting from the provision of, the Service); and

(iii) either

(A) the charge for the Call by means of which the Service is obtained or the rate according to which such Call is charged is a charge or rate which exceeds any amount determined by the Director in a determination made pursuant to paragraph 22.9 of this Condition; or

(B) the Service is a Chatline Service.

(b) "Chatline Service" means a service which consists of or includes the enabling of more than two persons (the participants) simultaneously to conduct a telephone conversation with one another without either:

(i) each of them having agreed with each other; or

(ii) one or more of them having agreed with the person enabling such a telephone conversation to be conducted,

in advance of making the Call enabling them to engage in the conversation, the respective identities of the other intended participants or the telephone numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would not otherwise be regarded as such a service;

(c) "Find-me-anywhere Service" means a service that enables a person to be contacted, whatever the location of that person, where the call charge is not distance dependant, and for which purpose a particular numbering range has been designated for such Find-me-anywhere Services under the National Numbering Conventions, such as Mobile Radio Telecommunication Services, and Radiopaging Services;

(d) "Message Service" means a service which consists of or includes, the sending of speech, music or other sounds or signals to any person or terminal apparatus who or which obtains access to that service by means of the Public Switched Telephone Network;

(e) "Public Switched Telephone Network" means any public telecommunication system which is used to provide switched voice telephony services to the general public;

(f) A "Call" includes a call made by a computer or made automatically by any other terminal apparatus.

22.12 An International Call which terminates on a telecommunication system outside the United Kingdom is not a Controlled Premium Rate Service. For the purposes of this Condition, an "International Call" means the conveyance of any Message by means of the

Applicable Systems which has been, or is to be conveyed, by means of any telecommunication system outside the United Kingdom but, for the avoidance of any doubt, an International Call does not include any call terminated on a telecommunication system within the United Kingdom.

22.13 The Licensee shall allocate Numbers to Controlled Premium Rate Services which it provides in accordance with this Condition in accordance with the National Numbering Conventions published by the Director in accordance with paragraph 26.5(a) of this Licence.

## **ANNEX B**

Condition 23 of Schedule 1 to the PTO licences shall be deleted in its entirety and shall be substituted by the following new Condition 23:

### **PROVISION OF SPECIAL FACILITIES RELATING TO CHATLINE AND MESSAGE SERVICES**

23.1 The Licensee shall comply with any direction made under this paragraph which requires the Licensee to make available such of the facilities listed in paragraph 23.2 as are specified in the direction. A direction under this paragraph shall be made by the Director after consultation with the Licensee, and shall specify only facilities which the Director considers it will be technically and economically practicable for the Licensee to provide. The direction shall specify the date by which each facility is to be provided and the class or description of customer (whether described by reference to area or otherwise) to whom it is to be provided and shall be subject to such conditions as the Director thinks fit.

23.2 The facilities referred to in paragraph 23.1 are:

- (a) the provision to any customer of the Licensee for voice telephony services who requests it of a bill or invoice showing, by reference to the number used to access the service, and the date and time on which access was obtained, the amount of any charge imposed by the Licensee for a telephone call to any service to which this Condition applies;
- (b) the notification to such a customer who requests it, as soon as reasonably practicable, of:
  - (i) the date on which the total charges accrued within the standard billing period of the Licensee for voice telephony services and any other service to be included in the bill or invoice for such services exceed an amount specified by that customer being an amount, or one of a number of amounts, from time to time specified by the Licensee as being suitable for the purpose; or
  - (ii) the date on which the aggregate charges accrued in any such period in respect of Chatline Services and Message Services to which this Condition applies exceed an amount determined from time to time by the Director; and
- (c) the barring, by means of apparatus forming part of the Applicable Systems, on request by any such customer, of access from any Exchange Line specified by that customer and in respect of which that customer is the customer of the Licensee, to all Chatline Services and Message Services to which this Condition applies.

23.3 The services to which this Condition applies are those Chatline Services and Message Services in respect of which:

- (a) the person providing the service obtains the whole or any part of his revenue from the Licensee (or, where that person is the Licensee, that part of the Licensee's business which provides the Service is credited with revenue from that part of its business which conveys the Messages comprised in, or resulting from the provision of, the Service); and
- (b) the person responsible for paying the charges for the telephone calls by means of which the Service is obtained is billed by means of his telephone bill for any amount in respect of the provision of the Service.

23.4 In this Condition, a "Chatline Service" and a "Message Service" have the respective meanings given to those terms in Condition 22.