

Determination: Controlled Premium Rate Services

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Summary

S.1 This document contains a determination relating to the provision of Controlled Premium Rate Services under sub-paragraph 22.9 of Condition 22 of all Public Telecommunications Operator (“PTO”) licences and under sub-paragraph 26.9 of Condition 26 of the class licences to run branch systems to provide Telecommunications 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 is 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 sub-paragraphs 22.11(a)(iii)(A) of all PTO licences and 26.11(a)(iii)(A) of all TSL and ISVR licences.

DETERMINATION RELATING TO THE PROVISION OF CONTROLLED PREMIUM RATE SERVICES UNDER SUB-PARAGRAPH 22.9 OF CONDITION 22 OF ALL PUBLIC TELECOMMUNICATIONS OPERATOR (“PTO”) LICENCES AND UNDER SUB-PARAGRAPH 26.9 OF 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 8th February 2002;
- (iii) the Class Licence to run Branch Systems to provide International Simple Voice Resale Services granted on 8th February 2002;

(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 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 General 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 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:

1. 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 **10.00am** today, **8 February 2002**.

DAVID EDMONDS
DIRECTOR GENERAL OF TELECOMMUNICATIONS
8 FEBRUARY 2002

EXPLANATORY MEMORANDUM

E1. The Director General of Telecommunications (the “Director General”) has today modified the PTO licences in accordance with section 12 of the Telecommunications Act 1984 as amended by the Electronic Communications Act 2000 (the ‘Act’). The modifications have replaced the previous Condition 22 with a new Condition 22 entitled ‘Controlled Premium Rate Services’ and made minor drafting changes to Condition 23 entitled ‘Provision of Special Facilities Relating to Chatline and Message Services’.

E2. The Secretary of State for Trade and Industry (the “Secretary of State”) has today, 8 February 2002, revoked and re-granted the class licences to run branch systems to provide Telecommunications Services (“TSL”) and International Simple Voice Resale Services (“ISVR”). The reason for doing so was 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 in identical terms to that of Condition 23 of the PTO licences.

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

E4. The reason why the Director General made the above-mentioned modifications to the PTO licences was 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 General. The Director General now therefore has 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 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. On 12 October 2001, in accordance with the procedure detailed in Condition 22.10 sub-paragraphs (a) and (b) of the PTO licences and Condition 26.10 sub-paragraphs (a) and (b) of the TSL and ISVR licences, the Director General published a Notice, served a copy of that Notice on all PTO licensees and sent a copy to all interested parties and the Independent Committee for the Supervision of Standards of Telephone Information Services (‘ICSTIS’). The Notice informed all licensees, interested parties and ICSTIS that the Director General 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.

E.7. This would mean that there would be two types of calls which would be caught by the definition of CPRS (subject to the other two conditions in the definition set out in Condition 22.11(a) of the PTO licences and Condition 26.11(a) of the TSL and ISVR licences being satisfied), namely:

- a call is charged at a "rate" (that is the total cost is determined by call duration) and that "charge rate" exceeds 10 pence per minute. This is irrespective of duration. For example, a service charged at £1 per minute would be captured under this determination whether or not the call lasted for five minutes or five seconds (as it is still charged at a "rate" above 10 pence per minute);
- a call is not charged at a "rate" (that is the call charge is a single drop charge i.e. not time-dependent) and that call cost exceeds 10 pence.

E.8. In proposing the amount and the rate specified, the Director General had regard to the current prevailing standard rates for premium rate calls of the licensees operating under the PTO licences. The Director General noted 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.9. In accordance with sub-paragraphs (c) to (d) of Condition 22.10 of the PTO licences and Condition 26.10 of the TSL and ISVR licences, the Director General allowed a period of 28 days for representations to be made, published those representations (except where the representations were confidential) in such a manner as he considered appropriate for the purpose of the bringing them to the attention of the licensees, interested parties and ICSTIS, and then gave a further period of 14 days for observations on the representations. Then having considered all representations and observations made, on 11 January 2002 the Director General published a draft determination setting out 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, together with an explanatory memorandum setting out the reasons for that draft determination. In accordance with the procedure detailed in Condition 22.10 sub-paragraph (f) of the PTO licences and Condition 26.10 sub-paragraph (f) of the TSL and ISVR licences, the Director General sent a copy of the draft determination to all PTO licensees and ICSTIS, allowing a period of 14 days in which to comment on the draft determination

E.10. The Director General received two comments during the consultation period allowed for comments on the draft determination.

E11. Cable & Wireless ("C&W") commented that the determination may capture certain services within the scope of CPRS regulation unintentionally, such as those

services charged at local rate if of relevant duration. The Director General does not consider that such services will be caught, however (see paragraph E6 above regarding which services are now caught by the definition of CPRS in Condition 22.11(a) of the PTO licences and Condition 26.11(a) of the TSL and ISVR licences).

E.12. A representation was also received from the Premium Rate Association ("PRA") which did not comment on the amount for the charge of the Call or the rate according to which Call is charged as set out in the draft determination, but expressed opposition to the further extension of the current regulatory regime for PRS without further explanation of the reasons behind the modifications to the licences (as referred to in paragraph E1 above).

E.13. The Director General notes that the views expressed by the Premium Rate Association are of a general nature, and relate more to his decision to modify the PTO licences in order to extend the PRS regulatory regime, rather than to the draft determination. In any event, the Director General considers that there is no need for further explanation of the reasons behind the modifications to the PTO licences, in particular given that consultation on the future regulation of the PRS industry has been ongoing formally and informally since 1999.

E.14. Having considered the comments received, therefore, and having regard to the current prevailing standard rates for premium rate calls of the licensees operating under the PTO licences, the Director has now decided to make the Determination contained in this document.

