

**Draft Direction under the provisions of
Regulation 6(6) of the Telecommunications
(Interconnection) Regulations 1997 of a dispute
between Energis and BT concerning BT's
method of calculating its NTS retail uplift charge
since April 1997**

Issued by the Director General of
Telecommunications

2 April 2002

Consultation closes 30 April 2002

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Draft Direction under the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 of a dispute between Energis and BT concerning BT's method of calculating its NTS retail uplift charge since April 1997

WHEREAS:

A) The Secretary of the State granted to British Telecommunications on 22 June 1984 a licence ("**the Licence**") under section 7 of the Telecommunications Act 1984 ("**the Act**") for the running of the telecommunication systems specified in Annex A to the Licence;

B) By virtue of Section 109 of, and paragraph 20 of Schedule 5 to, the Act, the Licence has effect as if granted to British Telecommunications plc ("**BT**");

C) The Secretary of State has also granted to Energis Communications Ltd ("**Energis**") a licence under section 7 of the Act for the running of telecommunications systems specified in that Licence;

D) In accordance with Condition 45 of its licence, BT has entered into interconnection agreement with Energis on 20 June 1997. The interconnection agreement includes provisions concerning Number Translation Services ("**NTS**").

E) By way of a determination entitled *Interim Charges for BT's Initial Standard Services for the year ending 31 March 1996* the Director General of Telecommunications ("**the Director**") determined a formula for NTS services where the call originated on one operator's network and terminated on another. This formula ("**the NTS Formula**") may be summarised as follows:

Originating Network Operator ("ONO") keeps $P - D + C$

Terminating Network Operator ("TNO") keeps $D - C$

Where

"**P**" is the actual retail price charged by the ONO to the customer

"**C**" is the pence per minute charge for conveyance over a single tandem segment of BT's network determined in this determination (multiplied by the number of minutes of the call plus an uplift ("**the NTS Retail Uplift**") to allow for retail costs incurred by the ONO in handling these calls.

"**D**" is the deemed retail price for the call.

F) The NTS Formula has been used in subsequent determinations and directions of the Director and continues to apply in accordance with, inter alia, the

November 1999 *Direction concerning BT's NTS Conveyance* and the December 1999 *Statement on the Relationship between Interconnection Charges and Retail Prices for Number Translation Services*.

G) The Telecommunications (Interconnection) Regulations 1997 ("**the Regulations**") inter alia implement Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision ("**the Directive**");

H) The Director has previously stated his intention to undertake a review of the NTS Retail Uplift in the NTS Formula and has engaged in a number of discussions with BT and Operators. The Director issued a draft direction entitled *Draft direction under the provisions of Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997 of BT's retail uplift charge for calls to operators' number translations services* ("**the Draft Retail Uplift Direction**") in October 2001 setting out his views for consultation on the review of the NTS retail uplift from 1 April 2000.

I) As a consequence of issuing the Draft Retail Uplift Direction, a number of operators responded to the Director submitting that BT had failed to update its retail uplift charge. Energis issued a letter to BT on 22 November 2001 seeking to dispute BT's past application of the retail uplift, seeking that BT applies the correct methodology. BT disagrees that it should be required to recalculate the retail uplift.

J) Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 ("**the Regulations**"), provides that where there is a dispute concerning interconnection between organisations, the Director General of Telecommunications ("**the Director**") shall, at the request of either party, take steps to resolve the dispute within six months of the date of the request. The direction which the Director makes to resolve the dispute must represent a fair balance between the legitimate interests of the parties, and must be notified to the parties in accordance with Regulation 8(3). The parties are entitled to a full statement of the reasons on which the direction is based.

K) On 8 February 2002, in accordance with the provisions of Regulation 6(6) of the Regulations, Energis referred this dispute with BT to the Director for determination.

L) The Director has considered inter alia, the information provided by the parties to the dispute and other interested parties along with the matters set out in Regulation 6(8) of the Regulations. The principal points are summarised in the Explanatory Memorandum which accompanies, and is published with, this direction.

M) The Director issued a draft of this direction and the explanatory memorandum which contains the Director's reasons on 28 March 2002 and responses were invited by 30 April 2002. A further two weeks was allowed for comments on comments.

N) Comments were received fromas summarised in of the explanatory memorandum published with this direction. These comments have been taken into consideration by the Director in making this direction.

THEREFORE:

Pursuant to Regulation 6(6) of the Regulations, and having considered the views of the parties and those matters set out in Regulation 6(8) of the Regulations, the Director makes the following direction to resolve the dispute between Energis and BT:

1. The NTS Retail Uplift applied by BT to assess its NTS conveyance charge, namely "C" in the NTS Formula, from 1 April 1999 until 31 March 2000 shall be as follows:

For Freephone NTS calls (0800/0808), 0.1325 pence per minute; and

For all other NTS calls, 0.2269 pence per minute.

2. Any amount payable by BT to Energis as a result of this direction should be paid together with interest calculated in accordance with Clause 13.13 of their interconnection agreement.
3. Any amount payable by Energis to BT as a result of this direction should be paid together with interest calculated in accordance with Clause 13.13 of their interconnection agreement.
4. The parties shall amend their interconnection agreement to give effect to this direction.
5. The terms defined or described in the recitals to this direction shall have the meaning so defined or described. All other words or expressions used in this direction shall have the same meaning as in the Directive, the Regulations, the Act or the Licence as appropriate.

Chris Kenny
Director of Compliance

**A person authorised under Paragraph 8 of Schedule 1 to the
Telecommunications Act 1984**

... March 2002

Explanatory memorandum

Chapter 1

Summary

1.1 The Director General of Telecommunications ('the Director') has issued a draft direction, in accordance with the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 ('the Regulations'), in response to a interconnection dispute referral from Energis, which claims that BT has not recalculated its NTS retail uplift percentage since 1997.

1.2 Oftel first established the principle of a supplemental charge to meet BT's relevant retail costs in providing access to NTS services, in the first ICAS *determination of Interim Charges for BT's Initial Standard Services for the year ending 31 March 1996* ('the 1996 Determination') published on 30 January 1996. The charging methodology applied was necessarily simplistic given the lack of available data at the time. As with other elements of BT's NTS retention, Oftel stated that, when these could be properly evaluated, the correct charge should be applied. The existing charge has become known to the industry as the 'broad brush' retail uplift charge.

1.3 Oftel issued initial discussion papers to the NTS focus group in February and July 2000 outlining elements that it believed needed to be considered in setting a soundly based charge and invited comments. Both papers proposed that the revised charge, when agreed, should have effect from 1 April 2000 and the second indicated that Oftel intended to issue a draft direction of the revised charge for consultation. For a number of reasons Oftel was unable to do so until October 2001. The draft direction issued in October 2001 shall hereafter be referred to as 'the draft retail uplift direction'.

1.4 Included in the comments on Oftel's draft retail uplift direction was an observation by operators that BT had not, as they had expected, reviewed its existing 'broad brush' retail uplift percentage since the introduction of Network Charge Controls (NCC) in October 1997. The operators suggested that, as an alternative to its proposed methodology, Oftel should consider requiring BT to recalculate the old charge. This observation was supported on 8 February 2002 in a referral from Energis of a dispute with BT. In this, Energis has requested a direction requiring BT to recalculate its existing retail uplift charge retrospectively to October 1997 which is the subject of this draft decision.

1.5 The submissions made by the parties to this dispute can be found at Chapter 3. As the submissions made by other operators in their response to the draft retail uplift direction of October 2001 are relevant to the issues raised by this dispute, they have also been taken into account in this draft decision and are also summarised in Chapter 3.

1.6 The Director has already consulted on his proposals in relation to the retail uplift from April 2000. He issues this separate draft direction in relation to this dispute at the same time as his direction on the retail uplift relating to the period from 1 April 2000 entitled *Direction Under The Provisions of Regulation 6(3) of the Telecommunications (Interconnection) Regulations 1997 of BT's Retail Uplift Charge For Calls to Operators' Number Translation Services* (hereafter referred to as the 'final retail uplift direction').

1.7 Subsequent to making their initial submissions, Energis and BT met Oftel to ensure that their points had been fully understood. BT demonstrated how it had, in fact, reset the uplift percentage on three occasions between 1 October 1997 and 1 August 1998. However, BT had not revised the retail uplift since that time. In the exceptional circumstances of this case, the Director proposes to set a retail uplift charge from 1 April 1999 using the methodology described in Chapter 5 of the accompanying final direction.

1.8 In reaching this view, the Director has considered all representations and relevant considerations including those set out in Regulation 6(8) of the Regulations and maintains that it represents a fair balance between the interests of the parties.

1.9 The Director therefore proposes that, with effect from 1 April 1999, the uplift for relevant retail costs applied by BT to give its NTS Conveyance charge should be:

Freephone (0800/0808)	0.1325 ppm
All other NTS (Local, National & >0 to 10ppm)	0.2269 ppm

This equates to an overall uplift of **0.2193ppm** which is **13.3%** lower than the charge currently used by BT of **0.2531ppm** and **23.9%** lower than the charge in force at 1 April 1999 (**0.2881ppm**)

Chapter 2

Background

2.1 This draft direction has been issued at the same time as the Director's final retail uplift direction for the period April 2000 to March 2001. As such, the background to that matter and this dispute is the same. The details of the background can be found in the Explanatory Memorandum to the final retail uplift direction and is not repeated here.

2.2 A number of submissions were received in response to the draft retail uplift direction (from 1 April 2000) both on the methodology proposed to calculate the uplift and from when the retail uplift should be revised. Energis issued a letter to BT on 22 November 2001 seeking to dispute BT's past application of the retail uplift, seeking that BT applies the correct methodology. Energis in February 2002 referred a dispute to the Director claiming that BT had failed to revise its retail uplift from October 1997. Energis requested that the Director resolve this dispute. This draft direction sets out the Director's initial decision on this request for consultation. It should be noted that a number of operators raised similar arguments in their responses to the Director's draft retail uplift direction of October 2001. These responses have been taken into account in relation to this dispute.

Chapter 3

Submissions by the parties

3.1 This chapter summarises the submissions of the parties and other submissions made by other operators which are relevant to this dispute.

Energis

3.2 Having considered the draft retail uplift direction (issued in October 2001) Energis stated that it came to its attention that BT had not updated the retail uplift for some time. Accordingly, Energis wrote to BT on 22 November 2001 disputing the retail uplift figures back to 1 April 1999. Energis submitted, that on further analysis, it believed that the retail uplift had not been applied correctly by BT since 1 October 1997 when the NCC regime came into effect.

3.3 Energis argued that, despite this alleged intention to update the retail uplift annually using the 'broad brush' methodology, BT had failed to apply this methodology. Furthermore, Energis said that BT had unilaterally decided not to update the retail uplift in line with Oftel methodology or even in line with its own methodology that it unilaterally moved to on 1 October 1997.

3.4 As to intentions, Energis submitted that Oftel had intended for BT to update the retail uplift annually and that it had an expectation that this would be done (and that this would occur using the 'broad brush' methodology). Energis relied on a number of determinations issued by Oftel during the Interconnection and Accounting Separation Regime (ICAS) that existed prior to October 1997. Energis also relied on a statement by Oftel in the draft retail uplift direction that BT had continued to update the retail uplift. For these reasons, Energis considered that BT was required to apply the 'broad brush' methodology after entry into force of the NCC regime. While acknowledging that the Director's *direction concerning NTS conveyance* of November 1999 did not define how the retail uplift should be calculated, Energis submitted that the Director should be entitled to rely on that direction to require BT to specifically define how the retail uplift should have been calculated (namely, using the broad brush methodology).

3.5 Energis provided a detailed analysis of how it believed BT had failed to meet operators' reasonable expectations in regard to the 'broad brush' uplift charge. Thus, Energis made the following observations:

- Energis believed that until the review of the retail uplift charge was completed Oftel intended that BT would continue to review the percentage uplift annually following publication of its audited Financial Statements (and that Energis had a reasonable expectation of this);
 - A number of Oftel documents issued since 1997 continued to describe how the retail uplift was updated annually and applied to BT's single tandem LRIC charge;
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- In setting its NCC charge on 1 October 1997 BT had unilaterally adopted a change to the method of calculation in setting an uplift of 61.5%; and
- If BT had reviewed the uplift annually the percentage would have fallen progressively to 32.6% at April 2001.

3.6 Energis held that these factors demonstrated how BT had failed to update the retail uplift charge as expected by operators and, indeed, by Oftel and had, as a result, over-recovered its retail costs to a significant extent. In a separate confidential annex to its submission, Energis detailed the extent to which it believed it had been 'overcharged' by BT and for which it was seeking a repayment.

BT

3.7 BT also provided a detailed submission to Oftel which is summarised here. BT said that it had already given its reasons, for adopting the process used in applying the retail uplift from 1997, to Oftel in relation to the draft **retail uplift** direction. This explanation was repeated at a further meeting held on 8 March 2002 in response to the referral from Energis to Oftel. A copy of BT's written response to Energis' referral to Oftel has been given to Energis. BT wanted to ensure Oftel fully understood its position in this matter and how its treatment of the existing retail uplift charge was a separate issue from Oftel's review of the methodology in the draft retail uplift direction (which has now been finalised at the time of issue of this draft decision).

3.8 BT described how it used a combination of Oftel's ICAS directions up to September 1997 and its Historic Cost Accounting (HCA) Financial Statements for 1997/98 to review the percentage uplift three times from 1 October 1997 and 1 August 1998. BT submitted that it had been totally open in making these changes by notifying the industry of the changes made on 1 February 1998 and 1 August 1998 in Network Charge Change Notices (NCCNs) numbered 7 and 65, on 12 December 1997 and 1 June 1998 respectively. BT stressed that operators had the information available when the NCCNs were available with explanatory memorandums. It said that at no time did any operator complain about the calculation logic that BT had used.

3.9 BT claimed it was unable to further review the charge after August 1998 as the method by which its Financial Statements were produced changed with the 1997/98 results from Historic (HCA) to Current Cost Accounting (CCA) methods. Being unable to produce 'like for like' uplift percentages BT submitted that it effectively lost its audit trail and therefore fixed the uplift at 61.5% thereafter.

3.10 Additionally, BT stated that Oftel had established the NTS focus group in June 1998 and this forum had identified the need for Oftel to review the retail uplift methodology along with other key NTS issues. BT said that this impending review combined with the loss of consistent data led it not to seek to recalculate the uplift percentage again after August 1998. BT said that it could not have anticipated, at the time, that this review would take this further time to complete.

BT also submitted to Oftel that the 1999 direction referred to by Energis did not address how the retail uplift should be calculated (as Energis suggested).

Energis response to BT's submission

3.11 Oftel copied BT's response to this referred dispute, to Energis for information. Energis offered its views on BT's submission and these are summarised below. The parties may make any further submissions to this dispute during the consultation period.

3.12 The key points in Energis' later comments can be summarised in two categories. First, Energis referred to BT's claims about how it was unable to review the uplift after August 1998 having lost the audit trail through changes in the accounting methods used in its Financial Statements. Second, Energis sought to counter BT's comments about the length of time it has taken Energis to raise the matter with BT and whether a dispute actually exists.

3.13 To the first point, Energis said that BT's argument depends crucially on there having been no other "consistent" accounting data BT could have used between 1 October 1997 and the current time. However, at the time the NCC regime was introduced, BT was producing CCA financial statements. These accounts have continued to be produced annually. On this basis, Energis submits that BT could have continued to apply the existing Oftel retail uplift methodology and ensured accounting consistency in the following way:

- The retail uplift would be calculated on the basis of "CCA retail and CCA network" costs;
- The retail uplift would be applied to CCA single tandem; and
- The retail uplift would be updated annually when new Financial Statements were published.

3.14 Energis submitted that the only "inconsistency" BT could point to with use of CCA data is that CCA retail costs are on the basis of fully allocated costs (FAC) whilst CCA network costs are on the basis of long-run incremental costs (LRIC). However, it was submitted that since BT is the biggest proponent of the view that FAC and LRIC with equi-proportional mark-ups (EPMU) are interchangeable, BT itself cannot consider this to be an inconsistency.

3.15 Energis therefore believes that accounting consistency, as described by BT, does not provide a rationale for BT's inaction. Energis submits that BT should and could have continued to set the retail uplift in line with the Oftel methodology using CCA data.

3.16 To the second point Energis said whilst it accepts that it has taken a considerable period of time for this dispute to be raised with BT and Oftel, it does not accept that its failure to identify BT's miscalculation of the retail uplift until now in any way negates the case against BT.

3.17 Energis submits that BT is implicitly arguing that if it is able to overcharge for a period of time without being detected it should be allowed to keep any monies

gained through the overcharging. This appears to put the onus on Operators to monitor BT's correct application of the NTS formula rather than expect BT to follow the rules as determined by Oftel. The knock-on effect being that if Operators do not closely scrutinise BT's published prices then BT can over-recover because its mis-application of the NTS formula will not be remedied retrospectively.

Other operators

3.18 Despite the fact that this draft direction applies directly only to the parties to the dispute ie Energis and BT, the Director is conscious that a number of other operators must be considered as interested parties in view of the comments made in response to the draft retail uplift direction. Exceptionally, therefore, a summary of the comments made by other operators has been included in this Chapter and have been considered by the Director in reaching this draft decision. As indicated at the beginning of this document, other operators have made similar allegations in their responses to the calculation of the retail uplift since October 1997.

3.19 The operators said that in considering the appropriate way forward, Oftel should have focused more on the regulatory rules which actually applied to BT's retail uplift. They said that these set the true value of the retail costs BT was *allowed* to recover from the origination of operators' NTS traffic. To this end, it was highly significant that BT had not been calculating the retail uplift figure in line with the existing 'broad brush' methodology established by Oftel. The operators believe that this has led to even more significant over-recovery of retail costs from NTS traffic by BT since the start of the price control than was originally realised.

3.20 Like Energis, the operators said that Oftel should require BT to recalculate the retail uplift figure following Oftel's previously stated 'broad brush' methodology. This would result in a series of new annual pence per minute figures for the uplift which BT should apply retrospectively for the period of mis-application – ie from 1 October 1997 to 31 July 2001. Such a move would be a pragmatic solution to the problems they had identified with Oftel's alternative methodology. The 'broad brush' methodology identified the amount of retail costs BT was allowed to recover from NTS calls at the start of the last retail price control and therefore provided Oftel's desired consistency.

3.21 The operators feel this proposed way forward represents a fair balance between the parties. In contrast to Oftel's proposal in the draft retail uplift direction, it was submitted that this way forward had the advantage of being practical and simple to implement in the short term. It also had the advantage of preventing BT from gaining from its refusal to correctly implement the existing NTS formula. In addition, this proposal would be generous to BT because terminating operators would be giving up any claim to retrospection to take account of scale economies.

Chapter 4

The Director's consideration and draft decision

4.1 This draft decision is made in accordance with the provisions of Regulation 6(6) of the Telecommunications (Interconnection) Regulations 1997 ('the Regulations') taking into account the considerations in Regulation 6(8).

4.2 The Director has considered the submissions made by Energis and BT as parties to this dispute and those made by other operators in their responses to the draft **retail uplift** from April 2000 direction insofar as they are relevant.

4.3 BT last made changes to the retail uplift on 1 August 1998. However, BT made no attempt to review the charge thereafter. It has claimed the changes to its accounting methods and the anticipated review from Oftel as the reason for this. However, it made no public statement to this effect either in writing or at suitable public for a prior to this current complaint being submitted.

4.4 The Director does not accept the arguments of Energis and the operators that BT was under an obligation to apply the broad-brush methodology rigidly on an annual basis. He certainly does not consider that it is appropriate to point to ICAS determinations as evidence of this (given that this a regime whereby the Director made the annual determinations) since that regime ceased to exist on 1 October 1997 when the NCC regime came in. Energis itself accepts that the 1999 Direction did not bind BT to a methodology for determining the NTS retail uplift. However, neither does he accept any argument from BT that it had no obligation whatsoever to review the retail uplift. Nor can the Director accept the overall review of the retail uplift as an excuse by BT to have done nothing to review its charge.

4.5 The retail uplift methodology is, as a means of calculating an interconnect charge, subject to the requirements of the Interconnection Directive (ICD). As such, because BT has been determined as having Significant Market Power for the purposes of the Interconnection Directive, it should be reviewed periodically to ensure it remains cost orientated. As BT has pointed out, the charge has been, by default, subject to the network price controls through its link to BT's single tandem conveyance charge. This has had the effect of reducing the amount of the charge from 0.3005ppm at October 1997 to 0.2531ppm from April 2001 or 16% over 3.5 years. Given the hybrid nature of BT's NTS retention with retail as well as network elements, however, Oftel believes that this, of itself, was not sufficient to ensure full cost orientation.

4.6 The Director believes that BT could have surmounted the change in its accounting methods in 1998 and set an uplift that more closely reflected the changing relationship between its retail costs and network charges for the relevant part of its Retail Systems Business. BT's retail costs have clearly been falling whilst its relevant network costs have increased over the period in question. This begs the question as to whether BT's retail uplift charge has continued to be 'cost based' between 1999 and 2002. This coupled with the extraordinary growth in NTS call volumes over the same period has meant that BT may have recovered significantly

more revenue for NTS call origination than its regulated charge ("C" in the old NTS formula), if correctly applied, would have produced.

4.7 Furthermore, the Director believes that, in not reviewing the charge subsequently and not advising Oftel or operators of its intention not to do so, BT acted unreasonably. BT could have sought Oftel's advice on the matter at the time but chose to arbitrarily freeze the uplift at 61.5% pending Oftel's impending review of the methodology for which, at the time (late 1998), no date had been agreed.

4.8 No operator sought to challenge the change at the time or to seek to check the level of uplift BT was applying from August 1998 until Oftel's draft proposals for the new methodology were published in October 2001. Indeed operators made no attempt to check or enquire about this charge until late in 2001.

4.9 The Director believes that operators understood that BT would continue to review the level of the retail uplift. However, had operators been concerned at the level of the charge over the intervening period they have had ample opportunity to seek or propose reviews by BT at any time. In the event no operator challenged BT's NCCNs notifying the changes it had made, Oftel believes it would not have been difficult for any operator seeking to understand and control their NTS revenues to determine what proportion of BT's regulated retention was made up by the retail uplift.

Timing

4.10 In the draft retail uplift direction it was proposed that a new level of **retail uplift** be applicable from April 2000 on the basis that this was the date originally proposed by Oftel in the original discussion paper issued in February 2000.

4.11 However, the Director recognises operators' concerns about BT not having acted reasonably in relation to the existing charging method. The Director also notes the fact that BT had reset the uplift between October 1997 and August 1998 and not, as alleged by Energis, only at October 1997. Oftel considers that the adjustments were not unreasonable as they were made to update the charges reflected in the most recently available financial statements from BT, albeit on a HCA basis. Furthermore, the fact that three changes were made in less than a year does not support the allegation from Energis that it had a clear expectation of a rigid annual review. It had clearly been on notice (by the NCCNs) of those changes.

4.12 Nevertheless, the Director believes that it would have been reasonable for BT to continue to amend the level of the retail uplift at a convenient period after August 1998. To have not done so, was unreasonable and an unfair outcome for competing operators. Accordingly, the Director has to consider when that convenient date might have been. He considers that in all the circumstances of this case the appropriate date that BT should have made an adjustment would be from 1 April 1999. Having considered all of the evidence available to him, and the matters set out in Regulation 6(8) of the Regulations, the Director considers that this proposed decision does represent a fair balance between the interests of the parties in this particular case.

4.13 The Director stresses that the proposed decision to apply retrospection in this instance should not be viewed as setting any general precedent in the event of future reviews or disputes concerning BT's charges. This draft decision is based upon the merits and circumstances of this particular case and on the specific circumstances which include BT's failure to review the retail uplift at all after August 1998 to ensure that it was cost orientated. The Director will consider carefully general points which have been put to Oftel on the policy issue of retrospection by a group of operators, but will continue to consider each individual case on its specific circumstances.

Calculation of uplift

4.14 Oftel has examined BT's calculation of its CCA based uplift (61.5%) at 1 August 1998 and concluded that this represents an expression of BT's HCA based retail costs as a percentage of its CCA network costs for the RSB. In replicating this calculation using data from the HCA and CCA Financial Statements for the six months to 31 March 1998 gives a comparable uplift of 45.9%.

4.15 Oftel's review of the retail uplift methodology however sought to, more accurately, apportion retail costs relevant to NTS to the new charge. Whilst BT's RSB retail costs may have fallen this has to be considered against the background of overall growth for all call types which, for BT has remained essentially flat. Therefore whilst total RSB costs may have fallen, the retail costs attributable to the huge growth in NTS calls will have risen over the period. This has been reflected in the new charge which is higher than an equivalent charge using the old methodology would have been. It would not, therefore, be appropriate for Oftel to require BT to recalculate its charge using the old method which would result in BT having to repay costs to operators which it has legitimately incurred.

4.16 The Director has now carried out a review of the retail uplift which has concluded in the final retail uplift direction issued at the same time as this direction. That review has resulted in a move towards a more robust methodology than the historical 'broad brush' methodology. Accordingly, in considering this dispute today (even though it relates to matters dating back to 1999) and the evidence available to him, the Director does not consider that it is appropriate or reasonable to recalculate the retail uplift from 1 April 1999 using the old broad brush methodology. The Director's initial view is that the new methodology contained in the final retail uplift direction should be used to calculate the charge from April 1999. This gives a charge from 1 April 1999 of:

Freephone (0800/0808)	0.1325 ppm
All other NTS (Local, National & >0 to 10ppm)	0.2269 ppm

Equating to an overall uplift of **0.2193ppm**

4.17 At the conclusion of the consultation period the Director will consider his final decision on the issues raised in this dispute. Consultees are put on notice that should the Director be minded to amend the proposals after the consultation period,

the Director does not intend to reconsult. They are therefore asked to take this into account when submitting their comments on this draft decision.

4.18 The Director has, for completeness, also examined what the charge would have been if BT had used the 'broad brush' methodology at the same date. He has assessed that BT's August 1998 review of the charge, in changing the HCA uplift of 46.3% to a CCA based figure of 61.5% is in effect expressing HCA retail costs as a percentage of CCA network costs. It is not possible to replicate BT's uplift figure, which applies to the six months from April to September 1997, from BT's Financial Statements. However, the Director believes it is possible to do so for the period from October 1997 to March 1998.

4.19 The expression of HCA retail costs over CCA network costs for that period gives an uplift of 45.9%. This change is consistent with the fall in unit retail costs as call volumes grew over the year. A similar calculation from BT's 1998/99 accounts yields an uplift of 36.4% confirming this trend.

4.20 A retail uplift of 45.9% at 1 April 1999 would give an overall charge of 0.2149ppm. However, for the reasons given above the Director does not propose to use this figure in setting the charge.

Chapter 5

Arrangements for making and viewing representations

5.1 The Director General's proposed draft decision is being made available to interested parties, together with the Director General's reasons, so that they may have a reasonable opportunity to make representations. Having considered any such representations, the Director General will, if appropriate, make the direction and will notify Energis, BT and interested parties of that direction and his reasons for making it. The closing date for submitting representations on both the charging methodology and the charges proposed in this determination is **30 April 2002**.

5.2 Where possible, comments should be made in writing and sent by e-mail to:

gbrighton@oftel.gov.uk

However, copies may also be posted or faxed to the address below. If any stakeholders are unable to respond in one of these ways, they should discuss alternatives with the Oftel manager named below:

Geoff Brighton
Oftel
50 Ludgate Hill
London
EC4M 7JJ

Tel: 020 7634 8925
Fax: 020 7634 8943

Further copies of this document

5.3 This document can be viewed in the *Publications* section of Oftel's website (www.oftel.gov.uk), under classification *Pricing and price control*. Paper copies and more accessible formats such as large print, Braille, disc and audio cassette can be made available on request. Please contact Oftel's Research and Information Unit by phoning 020 7634 8761 or by sending an e-mail to infocent@oftel.gov.uk.

Publication of representations made by stakeholders

5.4 On this occasion, Oftel is not programming a formal period during which interested parties may comment on the representations made by others. However, in the interests of transparency, all representations will be published, except where respondents indicate that a response, or part of it, is confidential. Respondents are therefore asked to separate out any confidential material into a *confidential annex which is clearly identified* as containing confidential material. Oftel will take steps to protect the confidentiality of all such material from the moment that it is received at Oftel's offices.

5.5 Non confidential representations can be viewed on Of tel's website in the *Publications* section under classification *Responses to Of tel consultations*. They can also be viewed at Of tel's Research and Information Unit. Appointments must be made in advance by phoning 020 7634 8761 or sending an e-mail to infocent@oftel.gov.uk.
