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Dear David

Draft guidelines for the interconnection of public electronic communications networks – CfB and CCE response

I enclose the joint CfB and CCE response to the Of tel consultation document on *Draft guidelines of the interconnection of public electronic communications networks*, a copy of which has been sent directly to the Of tel Project Manager.

The guidelines seek to set out clear rules for communication providers wishing to access and interconnect with other providers and networks in accordance with the requirements of the Access and Interconnection Directive. CfB and CCE have noted that Of tel has already consulted on and published guidelines dealing with "access". In order to determine whether the rules apply the guidelines propose three tests which will establish whether the network in question is a public electronic communications network. Stakeholders have been asked to comment on the robustness of the draft guidelines.

CfB and CCE have noted that, by and large, the guidelines simply offer Of tel's interpretation of the terms defined by the Communications Bill (which was published in draft form at the time the consultation document was issued). Whilst CfB and CCE understand the necessity for preparing the guidelines before the relevant legislation has been considered and passed by Parliament there is an element of risk that amendments might be made that will change the meaning of the legislation. This uncertainty is acknowledged in the Regulatory Impact Statement, the presence of which is welcomed. However, in the Impact Statement, we note the absence of content relating to the impact on small businesses and consumers in general and feel that this is an area where further work is required.

If the intention is to offer clarity to communications providers as to whether they have interconnection rights and obligations under the new regime there appear to be some areas of ambiguity. CfB and CCE have noted that whilst the Communication Bill considers the presence of a “transmission system” to be a requisite for establishing whether an electronic communications network (ECN) exists (Clause 28(1)), no definition of this term is offered in the Bill. The guidelines seek to overcome this perceived area of ambiguity by offering a technical explanation as to how the ECN will, in practice, operate in order for the guidelines to be applicable. CfB and CCE question the necessity for attempting to overcome the lack of a definition of a “transmission system” as it is their view that the key criterion is whether or not publicly available services are provided over the ECN. It appears to CfB and CCE that the omission of a definition of “transmission system” from the Communications Bill to be intentional in order to make the legislation as “future proof” as possible.

Whilst CfB and CCE are generally content with the guidance offered on determining whether or not the service provided over the ECN is publicly available it notes that, again, areas of ambiguity might arise. The suggestion that consideration of how the service is marketed may be indicative of whether or not the service is available to members of the public seems to CfB and CCE an unsatisfactory yardstick. Some operators may deliberately restrict the size of their customer base to avoid the costs of expansion and opt for a minimal marketing strategy but nevertheless would still be obliged to accept any customer within the area covered by their ECN who can meet their standard contractual terms.

CCE and CfB are concerned that the guidelines might work to hamper the entrance of new operators seeking to enter the market as they would be obliged to meet these requirements from day one. The net effect would be to stifle innovation.

Stakeholders views are sought on whether a list of PECNs is desirable and, if so, whether the list should be developed on a voluntary basis. CfB and CCE are of the view that the maintenance of a list of PECNs by Oftel/Ofcom would be essential to ensuring consumer confidence in the new regime.

We hope you find these comments useful

Moira Black, Chair CCE
Peter Sayers, Chair CfB