

Ref: SJA/007/12/02

16th December 2002

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Dear Frank

Re: Draft Guidelines for the Interconnection of Public Electronic Communications Networks

ntl: welcome the opportunity to comment on the draft guidelines and offer the following in response to your questions.

Question 1

Do stakeholders agree that the main tests of whether a PECN is provided are whether an ECN is provided and whether publicly available services are provided over that network?

We agree that the two criteria covered appear to be the most relevant in deciding whether a network 'qualifies' as a candidate for interconnection. However it may be advantageous to highlight further that an ECN must be provided 'wholly or mainly' for the purpose of providing publicly available services and that currently the Guidelines do not address what is meant by 'mainly' in this context.

We also believe that network integrity needs to be built into the Guidelines, as our expectation will be that any requesting PECN or ECS will need to be able to fulfil the guidelines recently issued by OfTel relating to Network Integrity. Especially relating to the standards required for interconnect capability such as C7 signalling.

Question 2:

Do stakeholders agree with the Guidelines' understanding of what constitutes an ECN and in particular, with what is to be understood by providing a transmission system?

We agree in general with the Guidelines' view of what constitutes an ECN, in as much as it appears consistent with our understanding of both the Communications Bill and the new European Directives pertaining to electronic communications networks.

With regard to what is understood by providing a transmission system, we believe that the Guidelines in their current form could give room for further debate, which we understand Oftel would like to eliminate. ntl: believe a transmission system is a prerequisite. We therefore propose that Oftel ensure that the Guidelines clarify exactly what constitutes a transmission system with regard to interconnection obligations and whether this is physical or virtual or both, thereby removing the ability to debate this area further.

We also believe that the Guidelines, as written, are not clear on the requirement for a clear linkage between the PECS and the interconnection requirements. For example, could a provider of a DSL Internet access services (a PECS) also request interconnection between their own internal voice network, and a public voice telephony network? Further clarification of this area is required within the Guidelines before they are issued, to minimise confusion.

Question 3

Do stakeholders agree with the guidelines' understanding of what constitutes an electronic communication service?

ntl: is in general agreement with what constitutes an electronic communications service. However, we do have concerns, as the Guidelines do not address exactly how Oftel will decide whether the 'principal feature' of a service is the conveyance of signals rather than the provision of what is comprised in the signal.

ntl: believe that the definition should be more transparent so that ISP's do not automatically assume they are a PECN or an ECS

We also believe the Guidelines should address directly what is meant by the words 'principal feature'. This is important because it is clear from the definition in the Bill that this is the key differentiating factor as to whether a given service is regulated under the Communications Bill or whether it is an information society service, falling under the scope of the Electronic Commerce Regulations.

Question 4: Do stakeholders agree with the distinction the Guidelines draw between conveyance and the provision of contents?

ntl: agrees with the distinction between conveyance and provision of signals. However we don't believe that it is sufficient to assert that they "are by definition not ECSs" when it is not clear that such a definition is contained in the Communications Bill. If the Guidelines do rely on another sources for the definition, could such sources be made available?

Question 5: Do stakeholders agree with the guidelines' understanding of what constitutes a publicly available service?

ntl agree in general with the guidelines in relation to this point, but still have concerns on how this will work in practice, for instance where do Large Corporations, Governments and Universities fit into the definition?

Question 6: Do stakeholders agree that the maintenance of a list of PECNs is desirable?

Yes we do agree that a list of PECNs will be essential so that PECNs can properly understand their own regulatory obligations. It is also desirable as there may

be an additional legal burden on operators to determine whether service should be provided or not under the Directives.

Question 7: Do stakeholders agree with the suggestion that if a list were considered to be desirable, it should be developed on a voluntary basis?

No ntl: would prefer the rules to be more stringent and that a list be mandatory. However, failing that, we would hope that those not registered would soon see the benefits of being registered. Negotiations between a PECN and a third party may depend on whether that third party is a PECN/PECS. An endorsed list could provide an opportunity for customers to know whether the party they are about to contract with has obligations, or whether they are contracting with non PECN/PECS businesses. This could also help reduce the negotiation time scales involved and limit confusion and the potential for disputes.

As ntl: are of the impression that Ofcom will need to maintain a list of some description to understand who is PECN and PECS for its own administration purposes, such as collating general market data information and for collecting fees, the list could easily include their PECN status.

On the issue of whether or not the list should be published, Oftel has clearly defined the practical benefits of publication of such a list in chapter 7.1. so we believe that the practical benefits of publication outweigh the appearance of a deregulatory position, which will cause confusion, so a list should be publicised and maintained.

As the list is being provided for the benefit of industry and customers as a whole, the list should be published in full with no opt-out or opt-in provisions to ensure that the practical benefits are achieved.

Question 8: By whom should any list be maintained? Are stakeholders content with the idea of a list maintained by Ofcom?

Ofcom would appear to be the only and the most sensible place for such a list to reside, so that it can be maintained regularly with information that Ofcom will receive in its role as the Regulator.

Yours sincerely

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