

**TELEWEST RESPONSE TO OFTEL'S DRAFT GUIDELINES FOR THE
INTERCONNECTION OF PUBLIC ELECTRONIC
COMMUNICATIONS NETWORKS**

16 December 2002

Matthew Copeland

Director Regulatory Affairs

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?

No. It is currently the case that there are intermediate suppliers of products and services which form part of a PECN but, in themselves, do not constitute a publicly available service although they can be defined as an ECN.

Historically, the ability to define a relevant service based on its "public availability" has been at best tenuous, at worse, spurious. Oftel identifies the danger that acceptance of this problem could result in a narrower definition regime. We disagree. There is a strong justification to take a wide definition and a test of PECN that includes intermediate suppliers e.g. where a service can be deemed to be publicly available on the basis of a broad test e.g. indirectly not directly available to the public.

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 strongly dispute the Guidelines attempt at defining what constitutes an ECN. In particular, the logic that an ECN has to exist behind a network node is highly dubious. The fact that an ECN is a transmission system that can include the conveyance of signals of any description clearly implies that while there may be a start and end point to such a signal it could be diffuse to the point where no network node exists e.g. it could be inclusive to another signal but have no physical boundary. As such, we believe that the provision of a transmission system can only be defined on the basis of a wider service availability test e.g. for so long as it is clear that an end product requires a specific service, then the conveyance of the same is an ECN irrespective of whether it has network nodes.

Question 3: Do stakeholders agree with the guidelines' understanding of what constitutes an electronic communication service?

In line with our response on question 3, it follows that defining an ECS is dependent on a wider test than the guidelines imply. In particular, the mandatory notion of conveyance underpinning an ECS is already redundant. Many communications services are available to customers without necessarily having been conveyed e.g. services that are loaded into hardware that then draw on some form of network or software connectivity. The primary service is obviously not an ECS.

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

The demarcation between the two proposed in the Guidelines seems unattainable. Content and communication services are heavily interchangeable to the extent that an end user can create bespoke content via a communication network.

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

Yes, we agree.

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

Yes. While we are generally reluctant to see any addition to the regulatory burden, in practical terms, the legacy of the old licence regime will demand such a list. e.g. we have over forty Telecommunications Act licences and will have the same number of general authorisations even though we are one company. In this context, there needs to be clarity as to how this old regime has been transposed at the company/licence specific level to the new PECN format.

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

No. In the first instance Oftel/Ofcom and the DTI must bring clarity to the new regime by the transparent and coherent transposition of the old. This means that Oftel/Ofcom/DTI alone should have responsibility for drawing up the initial list. Thereafter, there is some scope to making additions voluntary.

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

As above; Oftel/Ofcom.