

## **Notification under Section 107(6) of the Communications Act 2003**

### **Proposal to give a direction applying the Electronic Communications Code to ntl National Networks Limited**

1. The Office of Communications (“Ofcom”) propose to give a direction under section 106(3) of the Communications Act 2003 (the “Act”) applying the electronic communications code (the “Code”) to ntl National Networks Limited.
2. The draft Direction and accompanying explanatory statement setting out Ofcom’s reasons for the proposal are available at [http://www.ofcom.org.uk/consultations/current/airworks\\_nnnl/](http://www.ofcom.org.uk/consultations/current/airworks_nnnl/). Hard copies of the draft Direction and the explanatory statement will be made available on request. For hard copies, please contact Michael Galvin on 020 7783 4158 or by sending an email to [Michael.galvin@ofcom.org.uk](mailto:Michael.galvin@ofcom.org.uk).
3. Representations on the proposal may be made to: Michael Galvin, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA by not later than 5pm on **6 January 2005**.
4. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received will be published, unless it is clearly marked that the response is confidential, and made available in Ofcom’s Knowledge Centre. Please contact Jan Kacperek ([jan.kacperek@ofcom.org.uk](mailto:jan.kacperek@ofcom.org.uk)) for further information with respect to public inspection or, for responses to the draft Direction, visit Ofcom’s website ([www.ofcom.org.uk](http://www.ofcom.org.uk)).
5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.
6. In this Notification, “ntl National Networks Limited” means ntl National Networks Limited (registered company number 05174655).

**Stephen Unger**  
**Director of Telecoms Technology, Competition and Markets**

**A person authorised by Ofcom under paragraph 18 of the Schedule to the Office of Communications Act 2002**

**3 December 2004**

**[Draft] Direction under Section 106(3) of the Communications Act 2003  
applying the electronic communications code in the case of ntl National  
Networks Limited**

**[A Notification of this proposal was published on 3 December 2004]**

Whereas:

- (A) On 8 November 2004 ntl National Networks Limited made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Act and the notification published by Ofcom by virtue of the Transitional Provisions under section 107(2) of the Act on 10 October 2003 setting out their requirements with respect to the content of an application for the electronic communications code and the manner in which such an application is to be made;
- (B) On 3 December 2004 Ofcom published a notification of their proposal to give a direction applying the Code to ntl National Networks Limited in accordance with section 107 of the Act;
- (C) Ofcom have consider every representation made to them about the proposed Direction;
- (D) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with their relevant duties set out in sections 3, 4 and 107(4) of the Act

NOW, therefore, pursuant to section 106(3) of the Act, Ofcom make the following Direction-

1. The electronic communications code shall apply to ntl National Networks Limited for the purposes of the provision by ntl National Networks Limited of an electronic communications network to have effect in the United Kingdom.

Definitions and Interpretation

2. In this Direction, unless the contrary intention appears-

"Act" means the Communications Act 2003;

"ntl National Networks Limited" means ntl National Networks Limited (registered company number 05174655)

"Ofcom" means the Office of Communications; and

"Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

3. Except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.

4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

5. This Direction shall take effect on the day it is published.

**Stephen Unger**  
**Director of Telecoms Technology, Competition and Markets**

**A person authorised by Ofcom under paragraph 18 of the Schedule to  
the Office of Communications Act 2002**

**[Date]**

# Explanatory Statement

1.1 On 8 November 2004 ntl National Networks Limited (“NNNL”) applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. This application was made in accordance with section 107(1) of the Communications Act 2003 (the “Act”) and meets the requirements for any such application for a Direction applying the Code, and the manner in which such an application has to be made, as set out in the Notification published by Ofcom (by virtue of the Transitional Provisions in the Act) on 10 October 2003 under section 107(2) of the Act.

1.2 In considering NNNL’s application Ofcom has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom has considered its duty in section 3(1)(b) “to further the interests of consumers in relevant markets, where appropriate by promoting competition” and the first Community requirement set out in section 4(3)(a) to promote competition “in relation to the provision of electronic communications networks and services”. In this case, National Transcommunications Limited, one of the main operating companies in ntl Incorporated (the “Group”), is in the process of restructuring and part of this will involve the transfer of its UK optical fibre and radio networks to NNNL. These are its non-broadcast national network assets. At present, these are maintained by National Transcommunications Limited. In future they will be maintained, and thus provided by NNNL.

1.3 The proposed direction would help to promote competition as the network concerned is one of the most extensive in the UK. The network enables the Group to offer a broad range of products and services including basic telephony, broadband, and data services. The network’s reach also enables the Group to offer direct access services. Indeed, the Group provides direct access services to over 3 million residential customers. It is also a significant player in the business market. NNNL therefore needs to maintain the network concerned to ensure that the Group can offer retail services to present, prospective, and future customers.

1.4 In addition to the requirements of section 3 and of the Act, Ofcom has also had regard to its duties set out in section 107(4) of the Act, as set out below.

## **The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the applicant**

1.5 As explained in paragraph 1.3, the network concerned supports a wide range of communications products and services at the retail level and is also used to provide wholesale services to other communications providers. The network supports the provision of services across the UK including much of Northern Ireland, Glasgow, parts of the north east and west, central, eastern, and southern England, as well as the major conurbations of south Wales. The network concerned therefore plays a significant role in supporting the provision of services across many parts of the UK. In the service areas in which it operates, customers can seek direct access to the Group’s network.

1.6 It is also apparent that the Group believes that the restructuring will be beneficial to it and increase its efficiency. This will indirectly benefit customers, as the Group’s costs will be lower.

1.7 For these reasons, Ofcom believes that the network is beneficial to customers.

### **The practicability of the provision of the network without the Code**

1.8 The network concerned stretches over 10,000 kms. Much of it is either on or under public highways. National Transcommunications Limited has therefore needed to use its Code powers extensively to install and maintain the network to ensure continuity of service. As a result of the restructuring, which will see the transfer of many of these assets to NNNL, NNNL will now need to maintain those assets and, to the extent that the network is extended further, it will need to install new infrastructure. It is therefore extremely important for NNNL to benefit from permitted development rights associated with Code powers. It would also greatly benefit from not needing to apply for a street works licence under the New Roads and Street Works Act 1991, as amended by the Traffic Management Act 2004, on each occasion that it needed to install or maintain repair its network.

1.9 For these reasons, Ofcom believes that NNNL would benefit from Code powers as the Code would enable it to maintain the network concerned and allow the Group to continue to offer competing communications services.

### **The need to encourage the sharing of the use of electronic communications apparatus**

1.10 In the main, the network concerned is well established and the Group is less likely to install new infrastructure than it is to maintain present infrastructure. The Code is therefore needed for this purpose. However, in its application, the Group has reaffirmed an earlier public commitment to abide by best practice in this field. It has stated publicly that it accepts the principles underlying the Operators' Ten Commitments<sup>1</sup> and substantially reflects these, to the extent that they are relevant to its activities, in its own installation policies. The Operators' Ten Commitments include the need to "develop, with other stakeholders, clear standards and procedures to deliver significantly improved consultation with local communities".

1.11 In addition, the Group has additional corporate policies in these areas and has shown a commitment to ensuring that any works undertaken by it, including the removal and disposal of infrastructure, meet high standards. These would equally apply to NNNL.

1.12 The Group does not however currently offer wholesale sharing of its ducting.

1.13 Although the Group does not (and therefore NNNL might not) offer wholesale sharing of its ducting, Ofcom believes that the Group is committed to the installation and maintenance of its infrastructure in ways which minimise disruption and the impact on the environment.

### **Whether the Applicant will be able to meet liabilities as a consequence of:**

#### **(i) the application of the Code; and**

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<sup>1</sup> See the Code of Best Practice on Phone Network Development, which is available on the Office of the Deputy Prime Minister's website [http://www.odpm.gov.uk/stellent/groups/odpm\\_planning/documents/page/odpm\\_plan\\_606403.pdf](http://www.odpm.gov.uk/stellent/groups/odpm_planning/documents/page/odpm_plan_606403.pdf)

## **(ii) any conduct in relation to the application of the Code**

1.14 National Transcommunications Limited already has secured funds to meet any liabilities that it might have to meet. The Group believes that the value of its existing security should continue to be adequate following the restructuring and proposes to ensure that these securities also relate to NNNL as appropriate. The new securities would be put in place for 1 April 2005 onwards. In the interim, the Group proposes to put in place an intra-Group guarantee. Its proposals are supported by a letter signed for and on behalf of the board of NNNL.

1.15 For these reasons, Ofcom is satisfied that NNNL would put in place sufficient securities to meet any potential liabilities.

### **How to respond**

1.16 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on **6 January 2005**.

1.17 Ofcom prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

1.18 Please can you send your response to Michael.galvin@ofcom.org.uk.

1.19 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Michael Galvin  
Competition and Markets  
4<sup>th</sup> Floor  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7783 4158  
Fax: 020 7783 4109

### **Confidentiality**

1.20 Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

1.21 All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

1.22 Ofcom reserves its power to disclose certain confidential information where this is necessary to fulfil its functions, although in practice it would do so only in limited circumstances.

1.23 Please also note that copyright and all other intellectual property in responses will be assumed to be assigned to Ofcom unless specifically retained.

### **Next steps**

1.24 Following the end of the consultation period, depending on responses to the consultation, Ofcom intends to publish the final direction and explanatory statement applying the Code to NNL.

### **Ofcom's consultation processes**

1.25 Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.

1.26 This consultation is shorter than Ofcom's standard 10 week period because - for guidance on valid reasons see Ofcom's published consultation guidelines, available at [http://www.ofcom.org.uk/consultations/consult\\_method/consult\\_guide.pdf](http://www.ofcom.org.uk/consultations/consult_method/consult_guide.pdf).

1.27 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

1.28 If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
Tel: 020 7981 3585  
Fax: 020 7981 3333  
E-mail: [philip.rutnam@ofcom.org.uk](mailto:philip.rutnam@ofcom.org.uk)

## Annex 1

# Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

2 We will be clear about who we are consulting, why, on what questions and for how long.

3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

4 We will normally allow ten weeks for responses to consultations on issues of general interest.

5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 2

# Consultation response cover sheet

2.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.

2.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.

2.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to confirm on the response cover sheet that Ofcom can publish their responses upon receipt.

2.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.

2.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing

Name/contact details/  
job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

Yes

No

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and all intellectual property rights in the response vest with Ofcom. If I have sent my response by email, Ofcom can disregard any standard email text about not disclosing email contents and attachments.

Ofcom can publish my response: on receipt  once the consultation ends

Name

Signed (if hard copy)

