



Proposal to revoke Code Powers from certain companies

Statutory notification under section 107(6) of the
Communications Act 2003

Consultation

Publication date: 27 May 2016

Closing Date for Responses: 27 June 2016

About this document

This document sets out Ofcom's proposal to revoke certain directions granting 'Code powers' to a number of companies.

The grant of Code powers is intended to assist persons that provide an electronic communications network and/or system of conduits. The specified companies have informed Ofcom that they are no longer making use of those powers and have requested Ofcom to revoke the directions.

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Section 1

Summary

Purpose of consultation

- 1.1 Ofcom has granted powers pursuant to the electronic communications code (the “**Code**”) to each of the following companies:
 - 1.1.1 Fibernet UK Limited (with company registration number 02940263);
 - 1.1.2 RSL Cityspace Limited (with company registration number 03169833);
 - 1.1.3 Level 3 Communications Limited (with company registration number 03514850); and
 - 1.1.4 allpay Limited (with company registration number 02933191)(together, the “**Relevant Companies**”)
- 1.2 The directions granting Code powers to the Relevant Companies were made under section 106(3) of the Communications Act 2003 (the “**Act**”) ¹ and were granted in order to assist those companies in providing an electronic communications network and/or system of conduits which they were making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.
- 1.3 Ofcom has since received applications from each of the Relevant Companies requesting that Ofcom make a further direction under section 106 of the Act to revoke those Code powers.
- 1.4 Ofcom has reviewed each application for the revocation of Code powers and this document sets out Ofcom’s proposal to revoke the directions applying the Code to each of the Relevant Companies in accordance with sections 107(6), 115(2) and 115(4) of the Act.
- 1.5 Our reasons for that proposal are set out in Section 3 of this document and our draft direction revoking the directions applying the Code to each of the Relevant Companies is set out in Annex 4 to this document.
- 1.6 The closing date for responses to this consultation is 27 June 2016 and stakeholders wishing to respond are directed to Annex 1 for information on how to do so.
- 1.7 We will consider any responses received by the closing date before making our decision as to whether we should give a further direction revoking the directions applying the Code to each of the Relevant Companies.

¹ For those companies that were granted Code powers before the coming into force of section 106(3) of the Act, paragraph 17(2) of Schedule 18 (*Transitional Provisions*) provides that those companies shall be treated as a person in whose case the Code applies by virtue of a direction given by Ofcom.

Section 2

Background

The Code

- 2.1 The Code is designed to facilitate the installation and maintenance of electronic communications networks². It confers rights on providers of such networks and on providers of systems of conduits which are made available for use by providers of electronic communications networks for the purposes of the provision of those networks, to install and maintain apparatus in, over and under land and results in considerably simplified planning procedures.
- 2.2 The Code only has effect in the case of a person to whom it is applied by a direction given by Ofcom (or, in the case of the Secretary of State or any Northern Ireland department, where the Secretary of State or that department is providing or proposing to provide an electronic communications network)³.
- 2.3 The only purposes for which the Code may be applied in a person's case by a direction are the purposes of the provision of:
- 2.3.1 an electronic communications network; or
 - 2.3.2 a system of conduits which he is making available, or proposing to make available, for use by providers of electronic communications networks for the purposes of the provision by them of their networks.

The revocation of the Code

- 2.4 Section 115(2) of the Act sets out that Ofcom may revoke a direction applying the Code in a person's case if an application for the revocation has been made by that person.
- 2.5 Section 115(4) requires that a revocation under section 115(2) shall be made by a direction under section 106 of the Act to the person in whose case the Code has been applied by the direction being revoked.

Statutory consultation process on proposal

- 2.6 Before giving a further direction under section 106 of the Act revoking the Code from the companies in question, Ofcom must publish a notification of its proposal to give the direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification⁴.
- 2.7 Such a notification must contain the following⁵:
- 2.7.1 a statement of Ofcom's proposal to revoke the direction applying the Code⁶;

² "Electronic communications network" for the purposes of the Code has the same meaning as in the Act: see Telecommunications Act 1984, Schedule 2, paragraph 1(1) and section 32 of the Act.

³ Section 106(4) of the Act.

⁴ Section 107(6) of the Act.

⁵ Section 107(7) of the Act.

⁶ Section 115(5)(b) of the Act.

- 2.7.2 a statement of Ofcom's reasons for that proposal; and
- 2.7.3 a statement of the period within which representations may be made to Ofcom about the proposal (which period must end no less than one month after the day of the publication of the notification⁷).
- 2.8 The publication by Ofcom of a notification must be a publication in such manner as Ofcom considers appropriate for bringing the notification to the attention of the persons who, in Ofcom's opinion, are likely to be affected by it⁸.
- 2.9 The notification published at Annex 4 to this document is a notification for such purposes, which notification should be read in conjunction with the entirety of this document, including the reasons set out in Section 3.

Statutory duties

- 2.10 When carrying out its functions, Ofcom is required to act in accordance with its relevant duties set out in sections 3 and 4 of the Act; including its duties to further the interests of citizens in relation to communications matters and to promote the interests of all persons who are citizens of the European Union.

Impact assessment and equality impact assessment

- 2.11 An impact assessment, as defined in section 7 of the Act, must set out how, in our opinion, the performance of our general duties (within the meaning of section 3 of the Act) is secured or furthered by or in relation to what we propose.
- 2.12 There are two main options for this consultation:
 - 2.12.1 give a further direction revoking the directions applying the Code to each of the Relevant Companies; or
 - 2.12.2 not to give such a direction.
- 2.13 The analysis presented in the entirety of this consultation represents an impact assessment.
- 2.14 In carrying out our functions (again, something which includes giving a further direction to revoke the application of the Code), we are also under a general duty under the Equality Act 2010 to have due regard to the need to:
 - 2.14.1 eliminate unlawful discrimination, harassment and victimisation;
 - 2.14.2 advance equality of opportunity between different groups; and
 - 2.14.3 foster good relations between different groups,in relation to the following protected characteristics: age; disability; gender re-assignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

⁷ Section 107(9) of the Act.

⁸ Section 107(10) of the Act.

- 2.15 Such equality impact assessments (“EIAs”) also assist us in making sure that we are meeting our principal duty under section 3 of the Act.
- 2.16 We have therefore considered what (if any) impact the proposal in this consultation may have on equality. We do not, however, consider the impact of the proposal in this consultation to be to the detriment of any group within society. We have therefore not carried out separate EIAs in relation to race or gender equality, or equality schemes under the Northern Ireland and Disability Equality Schemes.

Section 3

Reasons for revocation

Introduction

3.1 This Section contains our reasons for our proposal to revoke each of the directions applying the Code to each of the Relevant Companies.

Explanatory Statement

Receipt of application for revocation

3.2 Each of the Relevant Companies have applied to Ofcom for the revocation of the direction applying the Code in their case, under section 115(2) of the Act.

3.3 Each of the Relevant Companies have explained that they are not exercising their Code powers and do not intend to do so in the future.

Ofcom's duties

3.4 In considering each of the applications made by each of the Relevant Companies, Ofcom considers that it has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act; in particular its duty to further the interests of citizens in relation to communications matters and to promote the interests of all persons who are citizens of the European Union.

3.5 Ofcom does not believe that the revocation of Code powers in these cases is contrary to its duties set out in the Act and will not prove to be detrimental to the interests of citizens in relation to communications matters. Each of the Relevant Companies have explained that they are not exercising their Code powers and do not intend to do so in the future. As a result, the revocation of Code powers from each of the Relevant Companies is likely to have little, if any, effect.

Proposal

3.6 For these reasons, Ofcom believes that it is appropriate to issue a further direction revoking the directions applying the Code to each of the Relevant Companies, as requested by each of the Relevant Companies. Thereafter, amongst other things, these companies would not be permitted to benefit from certain exemptions under Town and Country Planning legislation and nor would they be able to carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 27 June 2016**
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/various-may16/howtorespond/form>, 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 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data – please email numbering.information@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Numbering Team
Ofcom
4th Floor Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3061
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.

Further information

- A1.6 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Ofcom's Numbering Team on 020 7981 3061.

Confidentiality

- A1.7 We believe 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, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.
- A1.8 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish

all responses, including those that are marked as confidential, in order to meet legal obligations.

- A1.9 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.10 Following the end of the consultation period, Ofcom intends to publish a statement setting out its final decision in June 2016.
- A1.11 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.12 Ofcom seeks to ensure that responding to a consultation is as easy as possible. For more information please see our consultation principles in Annex 2.
- A1.13 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 . 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, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Steve Gettings, Secretary to the Corporation, who is Ofcom's consultation champion:

Steve Gettings
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email steve.gettings@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom 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. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A3.3 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 complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other 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

Please tick below what part of your response you consider is confidential, giving your reasons why

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 not to be published, 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)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Statutory notification

Notification under sections 107(6) and 115(2) of the Communications Act 2003

Proposal to revoke directions applying the electronic communications code in the case of companies listed in the Appendix to this Notification

Proposal in this Notification

1. Ofcom hereby proposes, in accordance with sections 107(6) and 115(2) of the Act, to give a further direction under section 106(3) of the Act revoking the directions applying the Code to each of the Relevant Companies.
2. The proposed direction is set out in the attached Schedule.
3. Ofcom's reasons for giving the proposed direction are set out in the accompanying consultation document.

Ofcom's duties

4. In making this proposal, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

Making representations

5. Representations on this proposal may be made to: Numbering Team, Ofcom, 4th Floor Riverside House, 2a Southwark Bridge Road, London SE1 9HA, by no later than 5pm on **27 June 2016**.

Interpretation

6. In this Notification—
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
 - (c) “**Ofcom**” means the Office of Communications; and
 - (d) “**Relevant Companies**” means each of the companies listed in the Appendix to the Schedule to this Notification.
7. For the purpose of interpreting this Notification—
 - (a) headings and titles shall be disregarded; and
 - (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

8. The attached Schedule forms part of this Notification.

Signed

A handwritten signature in black ink, appearing to read 'BP', with a long horizontal stroke extending to the right.

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

27 May 2016

SCHEDULE

[Proposed] Direction under section 106(3) of the Communications Act 2003 revoking a number of directions applying the electronic communications code in the case of companies listed in the Appendix to this Direction

Background

1. Ofcom has issued directions, pursuant to section 106(3) of the Act [or paragraph 17(2) of Schedule 18 of the Act], applying the Code in the case of each of the Relevant Companies.
2. Each of the Relevant Companies has since applied to Ofcom for a further direction revoking the directions referred to in paragraph 1 above, in accordance with section 115(2) of the Act.
3. Prior to making a direction under section 106(3) of the Act to revoke the directions referred to in paragraph 1 above, Ofcom must publish a notification of its proposal to give that direction and consider any representations about that proposal that are made to Ofcom within the period specified in the notification.
4. On 27 May 2016, Ofcom published, in accordance with sections 115(4) and 107(6) of the Act, a notification of its proposal to give a further direction revoking the directions referred to in paragraph 1 above for the reasons set out in the consultation document accompanying that notification. That notification invited representations to Ofcom by no later than 5pm on 27 June 2016.
5. *[Ofcom has considered every representation about the proposal made to it/Ofcom did not receive any representations about this proposal]*. For the reasons set out in the explanatory statement accompanying this proposed Direction, Ofcom has considered and acted in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.

Decision

6. Ofcom hereby directs, in accordance with section 106 of the Act, that each direction applying the Code in the case of each Relevant Company under section 106(3) of the Act shall be revoked.
7. This Direction shall take effect on the day it is published.

Interpretation

8. In this Notification:
 - (a) “**Act**” means the Communications Act 2003;
 - (b) “**Code**” means the electronic communications code set out in Schedule 2 to the Telecommunications Act 1984 (as amended);
 - (c) “**Ofcom**” means the Office of Communications; and
 - (d) “**Relevant Companies**” means each of the companies listed in the Appendix to this Direction.

9. For the purpose of interpreting this Notification:

- (a) headings and titles shall be disregarded;
- (b) words in the singular include the plural and in the plural include the singular;
- (b) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.

Signed

Brian Potterill
Competition Policy Director

A person duly authorised in accordance with paragraph 18 of the Schedule to the Office of Communications Act 2002

Appendix

Company Name	Company Number
Fibernet UK Limited	2940263
RSL Cityspace Limited	3169833
Level 3 Communications Limited	3514850
allpay Limited	2933191