

**Direction under Section 106(3) of the Communications Act 2003 revoking a direction applying the Electronic Communications Code in the case of Rateflame Limited**

**A Notification of this proposal was published on 15 September 2005**

Whereas:

- A. On 1 June 1999, the Secretary of State granted Rateflame Limited ('Rateflame') (registered company number 03033408) a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Rateflame to run a telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to Rateflame;
- B. By virtue of section 106 of the Communications Act 2003 (the 'Act'), which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Act;
- C. By virtue of paragraph 17 of Schedule 18 to the Act, Rateflame is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- D. The Office of Communications ('Ofcom') have received an application from Rateflame dated 12 May 2005 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- E. On 15 September 2005, Ofcom published a notification of their proposal to revoke the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- F. Ofcom did not receive any representations in relation to the proposed Direction;
- G. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that in making this Direction they have acted in accordance with their relevant duties set out in sections 3 and 4 of the Act;

**NOW, therefore, pursuant to section 106 of the Act, Ofcom make the following Direction-**

1. The direction applying the electronic communications code to Rateflame under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.
2. 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.
3. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.
4. 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**

**3 November 2005**

# Explanatory Statement

1.1 On 1 June 1999, the Secretary of State granted Rateflame Limited ('Rateflame') a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Rateflame to run a telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to Rateflame.

1.2 Following a change in the regime for electronic communications after 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Communications Act 2003 (the 'Act').

1.3 The Code applied to Rateflame post 25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which Convergence is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

1.4 On 12 May 2005, Rateflame made an application for the revocation of its Code powers under section 115(2) of the Act and Ofcom is now proposing to revoke the Deemed Direction.

1.5 In its application for the revocation of the Code, Rateflame explained that it had never exercised its Code powers and, as it was ceasing to trade, would not be using its Code powers in future.

1.6 On 15 September 2005, Ofcom published a notification under section 107(6) and draft Direction under section 106(3) in which it set out its proposal to revoke Code powers in so far as they applied to Rateflame. Ofcom did not receive any representations in relation to its proposals.

1.7 In considering Rateflame's application, 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. Ofcom does not consider that the revocation of Code powers in this case 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. Rateflame does not need to use Code powers and therefore the revocation of these powers will have little if any effect.

1.8 For these reasons, Ofcom believes that it is now appropriate to revoke the Deemed Direction as requested by Rateflame. Amongst other things, Rateflame does not now benefit from certain exemptions under Town and Country Planning legislation<sup>1</sup> and nor is it permitted to carry out street works unless it specifically seeks a licence to do so under the New Roads and Street Works Act 1991.

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<sup>1</sup> See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern Ireland) 2003 SR No. 98. Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 SSI 2001/266.