

Direction under Section 106(3) of the Communications Act 2003 revoking a number of directions applying the Electronic Communications Code in the case of the companies listed in the Addendum to this Direction

A Notification of this proposal was published on 20 October 2010

Whereas:

- A. The Secretary of State granted a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') to each of the companies listed in the Addendum to this Direction authorising each company 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 each of them;
- 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, each company is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Directions') under section 106(3) of the Act;
- D. The Office of Communications ('Ofcom') received an application from Virgin Media Limited dated 1 October 2010, on behalf of each of the companies listed in the Addendum to this Direction, for the revocation of each of the Deemed Directions in accordance with section 115(2) of the Act;
- E. Each company listed in the Addendum to this Direction is part of the Virgin Media Limited group of companies;
- F. On 20 October 2010, Ofcom published a notification of their proposal to revoke each of the Deemed Directions by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- G. Ofcom received a response from Virgin Media Limited in which it explained that it needed to retain Code powers for a number of the companies listed in the draft Direction and Ofcom have therefore amended the list of companies affected to reflect Virgin Media Limited's request;
- H. Ofcom did not receive any other responses;
- I. 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. Each Direction applying the electronic communications code to each company listed in the Addendum to this Direction 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.

Gareth Davies
Director of Competition Policy

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

25 November 2010

Addendum

Company	Company Number	Licence number or Direction and date issued
Barnsley Cable Communications Limited	2466594	3/729/1/133 14.11.90
Birmingham Cable Limited	2244565	3/450/1/143 02.11.89
Bradford Cable Communications Limited	2664803	3/1003/1/167 15.07.93
Cable Camden Limited	1795642	3/438/1/140 07.08.89
Cable Enfield Limited	2466511	3/748/1/133 25.11.90
Cable Hackney and Islington Limited	1795641	3/706/1/133 29.10.90
Cable Haringey Limited	1808589	3/527/1/139 04.04.90
Doncaster Cable Communications Limited	2407940	3/708/1/135 01.11.90
Eurobell (Holdings) Limited	2904215	3/13116/1/123 28.07.97
Halifax Cable Communications Limited	2459173	3/790/1/134 07.01.91
Middlesex Cable Limited	2460325	3/816/1/133 15.02.91
ntl National Networks Limited	5174655	Direction 27.01.05
Sheffield Cable Communications Limited	2465953	3/775/1/133 19.12.90
Telewest Carrier Services Limited	2475098	3/1001/2/169 25.09.93
Telewest Communications (Liverpool) Limited	1615567	3/7581/133 30.11.90
Telewest Communications (Central Lancashire) Limited	1737862	3/448/1/138 14.10.89
Telewest Communications (Cotswold) Limited	1743081	3/303/1/143 26.08.88
Telewest Communications (Glenrothes) Limited	SC119523	3/836/1/136 18.04.91
Telewest Communications (Dumbarton) Limited	SC121700	3/478/1/140 18.01.90
Telewest Communications (Cumbernauld) Limited	SC121614	3/480/1/140 18.01.90
Telewest Communications (South East) Limited	2270764	3/711/1/135 30.11.90
Telewest Communications (South Thames Estuary) Limited	2270763	3/756/1/136 30.11.90
Telewest Communications (London South) Limited	1697437	3/546/1/141 08.05.90

Telewest Communications (Telford) Limited	2389377	3/847/1/133 12.04.91
Telewest Communications (Flyde & Wyre) Limited	2935056	3/1256/1/117 19.12.96
Telewest Communications (Southport) Limited	3085912	3/1257/1/117 19.12.96
Telewest Communications (Dundee & Perth) Limited	SC96816	3/792/1/135 and 3/794/1/135 17.01.91
Telewest Communications (Midlands) Limited	1882074	3/806/1/134 25.01.91
Telewest Communications (South West) Limited (formerly West County Cable Ltd)	2271287	3/464/1/141 05.12.89
Telewest Communications (Falkirk) Limited (formerly Cable North (Forth District))	SC122481	3/728/1/134 11.11.90
Telewest Communications (Motherwell) Limited	SC121617	3/479/1/140 18.01.90
Telewest Communications (North East) Limited	2378214	3/8401/137 26.04.91
Telewest Communications (Wigan) Limited	2451112	3/730/1/133 14.11.90
Telewest Communications (Scotland) Limited	SC80891	3/788/1/138 20.12.90
Telewest Communications (St Helens & Knowsley) Limited	2466599	3/768/1/133 08.12.90
Wakefield Cable Communications Limited	2400909	3/807/1/133 07.02.91
Windsor Television Limited	1745542	3/835/1/130 11.04.91

Explanatory Statement

1.1 The Secretary of State granted each of the companies listed in the Addendum to the draft Direction a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising each company 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 each of them.

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 each of the companies listed in the Addendum to the draft Direction post 25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which each company is treated after 25 July 2003 as a person in whose case the Code applies by virtue of the directions (the 'Deemed Directions') under section 106(3) of the Act.

1.4 On 1 October 2010, Virgin Media Limited made an application for the revocation of the Code powers that applied to each of the companies listed in the Addendum to the draft Direction under section 115(2) of the Act and Ofcom is now proposing to revoke the Deemed Directions in each case. Each company listed in the Addendum to the draft Direction is part of the Virgin Media Limited group of companies.

1.5 In its application for the revocation of the Code in the case of each company listed in the Addendum to the draft Direction, Virgin Media Limited explained that since the merger of 'ntl' and 'Telewest' in 2006 all road work activities in the Virgin Media group have been undertaken by either Virgin Media Limited or Virgin Media Wholesale Limited both of which have Code powers. In the request, Virgin Media Limited stated that it did not require Code powers for each of the companies listed in the Addendum to the draft Direction and considered that Code powers could be revoked for each company listed.

1.6 Virgin Media Limited has since informed Ofcom that a number of the companies listed in the draft Direction continue to need their Code powers to maintain existing contractual obligations to maintain the functioning and application of agreements pertaining to those companies. Ofcom have therefore amended the list of companies that will no longer benefit from or need Code powers. The companies concerned are: Eurobell (South West) Limited; Eurobell (Sussex) Limited; Eurobell (West Kent) Limited; and Telewest Limited. Each of these companies continues to retain Code powers.

1.7 In considering Virgin Media Limited's application, and the amendments referred to above, 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. Virgin Media Limited retains Code powers and therefore the revocation of the powers of each company listed in the Addendum to the draft Direction is unlikely to have little if any effect.

1.8 For these reasons, Ofcom believes that it is now appropriate to revoke each of the Deemed Directions as requested by Virgin Media Limited. Thereafter, amongst other things, none of the companies listed in the Addendum to the draft Direction would be permitted to benefit from certain exemptions under Town and Country Planning legislation¹ and nor would they be able to carry out works 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.

¹ 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.