



**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 did not receive any representations relating to the proposed Direction as set out in the explanatory statement accompanying this Direction; and
- 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
- E. **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.

DIRECTION under Section 106(3) of the Communications Act 2003 applying the Electronic Communications Code in the case of ntl National Networks Limited

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

27 January 2005

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 On 3 December 2004, Ofcom published a notification of its proposal to give a Direction applying the Code to NNNL in accordance with section 107 of the Act. Ofcom asked for any comments on its proposal to be made by 6 January 2005. No responses were received.
- 1.3 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.
- 1.4 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. At present, the Group provides direct access services to over 3 million residential customers and it therefore needs to maintain its network to ensure continuity of service. 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.
- 1.5 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

- 1.6 As explained in paragraph 1.4, 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.

- 1.7 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.

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 km. 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. Ofcom is satisfied that 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 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 is satisfied 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**
- (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.