



# Review of the Universal Service Obligation

**Statement**

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## Section 1

# Summary

- 1.1 Universal Service ensures that basic fixed line services are available at an affordable price to all citizen and customers across the UK.
- 1.2 The scope of the Universal Service Obligations ('USO') is defined by the EC Universal Services Directive ('USD'). The Secretary of State for Trade and Industry specifies the services which must be provided throughout the UK in the Universal Service Order ('the Order'). The Order has been implemented by Ofcom through specific conditions on the Universal Service Providers ('USPs'), BT and Kingston Communications. USO services include: special tariff schemes for low income customers; a connection to the fixed network, which includes functional internet access; reasonable geographic access to public call boxes; and the provision of a text relay service for customers with hearing impairment.
- 1.3 Ofcom has reviewed USO to:
  - ensure that the obligations continue to meet the needs of consumers as demands and technology change;
  - find the right balance between the needs of vulnerable customers and changing commercial conditions; and
  - make sure the benefits of measures reach those who need them by targeting and creating incentives.
- 1.4 This is the third document Ofcom has published during the review. In a consultation document on 10 January 2005 ('the January consultation'), Ofcom examined the current operation of USO and made a series of proposals for change. In a statement and further consultation published on 30 June 2005 ('the June statement'), we set out our conclusions and asked for comments on proposals for legal changes to implement those conclusions. We received 50 responses to that document. We intended to complete the review by the end of 2005 but have been delayed by the need to consider legal issues arising from a dispute raised by providers against BT's increase of the connection charge to BT's Text Direct service. This statement now sets out our conclusions.
- 1.5 As USPs, BT and Kingston have to ensure that customers can afford telephone service. This is achieved through special tariff schemes aimed at customers on low incomes. BT's existing schemes – Light User Scheme (LUS) and InContact - use a proxy of low use in order to attract low income customers and around 60% of users are from low-income households. Ofcom consulted on BT proposals for an alternative scheme targeted more directly at those on low incomes. In the June statement Ofcom set out a revised targeted scheme proposed by BT modified to reflect concerns raised in responses to the consultation. The changes included a discount for early payment and an increased allowance of free calls included with the line rental.
- 1.6 Ofcom's view was that the scheme represented a viable replacement for the existing schemes. To protect customers on the existing schemes, Ofcom indicated that the existing schemes will not be withdrawn until 600 000 customers are using the new scheme.

- 1.7 Since the June statement the eligibility criteria for the scheme have been broadened to address the concerns raised in responses. The scheme will be available for customers in receipt of Income Support, income-based Job Seekers Allowance and Pension Credit.
- 1.8 Disconnections policy is another indicator of affordability. BT has recently reviewed its credit management procedures and increased its marketing of schemes such as prepay to help customers with payment difficulties. This appears to be assisting customers and disconnection levels are beginning to fall.

### Public Call Boxes

- 1.9 Public Call Boxes (PCBs) provide a service that is valued and needed by many people without a phone or those away from home, who cannot, for whatever reason, use their mobile. Many disadvantaged and vulnerable consumers still rely on PCBs.
- 1.10 BT and Kingston are each required to ensure adequate coverage of PCBs. Ofcom considers that adequate coverage is best determined at a local level. The last PCB cannot currently be removed from a site if a local council objects – ‘the local veto’. As revenues have fallen, BT has argued that the local veto is unduly restrictive. In the June statement Ofcom concluded that the local veto should remain but be restricted to one council in each area with other local public bodies continuing to be consulted. The bodies with the veto will be the unitary, district, metropolitan or equivalent councils. This represents a change from the June statement where Ofcom proposed that in two-tier authorities county councils should hold the veto; in the light of responses Ofcom has concluded that the veto should be held by district councils in these areas.
- 1.11 As set out in the June statement the consultation period for proposed removals will be extended from 42 to 90 days to make the process more transparent and consistent. Ofcom is issuing consultation guidance and changing the definition of a ‘site’ - this determines which PCBs are subject to the local veto – from 100 to 400 metres. There will also be greater freedom for BT and Kingston to use cashless PCBs.
- 1.12 Ofcom is publishing a leaflet for stakeholders on the rules around PCB removals which will be distributed following this statement.

### Services for customers with disabilities

- 1.13 A key service for customers with disabilities is text relay. However, it needs to evolve as demand and technology changes. As set out in the June statement Ofcom has concluded that a Stakeholder Advisory Panel for the relay service should be established and an annual plan and report on the operation of the service published. These changes will improve transparency and accountability. A study into a video relay and captioned telephony service is being carried out for Ofcom by City University
- 1.14 Ofcom is also proposing that other changes to requirements on providers in respect of services for disabled customers should be made. These include extending the scope of customers who can receive bills and contracts in special formats and increasing some accessibility requirements for PCBs. These changes will require changes to the relevant conditions. Ofcom will propose these changes in a separate consultation document shortly. This document will also address legal issues arising

from the dispute raised by providers against BT's increase of the connection charge to BT's Text Direct service.

### Provision of connection at speeds that permit functional internet access

- 1.15 BT and Kingston are required to provide a connection upon reasonable request and at uniform prices, irrespective of geographical location. This requirement is particularly valuable to customers in remote rural areas whom the market might otherwise not serve. Where installation of a new line costs £3,400 or less, BT sets a standard charge. Where installation will cost over £3,400, BT requires the customer to pay the excess costs (plus its standard connection charge). Ofcom has concluded that it would be clearly justified for BT not to charge uniform prices. Ofcom is therefore consenting to BT charging non-uniform prices above £3,400 and publishing guidance which, amongst other things, will suggest BT applies the standard charge when costs exceed £3,400 for particularly vulnerable customers.
- 1.16 The obligation on BT and Kingston to provide a connection upon reasonable request encompasses the provision of a narrowband connection capable of 'functional internet access' FIA. Guidelines on FIA were issued in 2003 which said that users should be able to expect connection speeds of at least 28.8 kbit/s. It also set out measures that universal service providers should take in response to complaints about data speeds. The Guidelines have been beneficial and Ofcom has concluded that no significant changes are needed at this time. In particular, the benchmark minimum speed will remain at 28.8 kbit/s.

### Costs and benefits of providing USO

- 1.17 USO is currently funded by BT and Kingston as the obligations have not been considered to represent an unfair burden on them. In the consultation document Ofcom updated estimates of the costs and benefits to BT of providing USO. These suggested that since 2001 the costs of serving uneconomic customers have fallen significantly while the costs of providing uneconomic payphones has risen sharply by a similar amount. Benefits from providing universal services arise primarily from brand image and advertising on PCBs. Ofcom estimated that the benefits have remained broadly stable. We estimated the current costs of USO for BT are around £57-74m and the benefits are around £59-64m. Ofcom has concluded that these estimates are reasonable and believes that there is unlikely to be an undue financial burden currently on BT as a result of USO. However, Ofcom intends to carry out a cost benefit analysis of the provision of USO beginning in 2007 once the changes to the obligation set out in this document have been introduced.

### Future developments

- 1.18 The USO review is focussed on the next two to five years and was carried out alongside the Strategic Review of Telecoms ('Telecoms Review') which looked at longer term Universal Service issues. The Telecoms Review's conclusions on USO were set out by Ofcom in September 2005. The Telecoms Review emphasised the importance of USO as a 'safety net' for vulnerable consumers but noted that the mechanisms for funding, for example a Universal Service fund, and provision of universal service may need to change if and when the provision of USO becomes an unfair burden. It may also be appropriate to alter the overall scope of USO. Though Ofcom does not believe that there is a case for proposing that universal services be extended to include broadband at this point, the Telecoms Review considered how the scope of USO might evolve over time.

## Universal Service Review

- 1.19 In addition the European Commission is currently reviewing the framework of telecommunications directives. This review includes the USD. Ofcom, with the Department of Trade and Industry, is providing input to that review. The conclusions will be significant for the future evolution of the USO and will provide the background for Ofcom's next review of the obligation.

## Section 2

# Introduction

- 2.1 Universal Service provides a safety net that ensures basic fixed line services are available at an affordable price to all citizens and consumers across the UK.
- 2.2 There are both social equity and economic grounds for USO. It provides services to help vulnerable customers and those in remote and rural areas, whom the market might not otherwise choose to serve, allowing them to take their full part in the economy and society. In addition, all citizens benefit by having a larger telephone network; they can contact and be contacted by more people. Cheap communication also enhances economic growth. The balance between these rationales has changed over time. In 1984 when the proportion of customers with fixed telephones was around 77%, the focus was on increasing the size of the network. Today, when 99% of people have access to telephony services, USO is more focused on bringing benefits to those with low incomes who have difficulty affording telephony service, customers with disabilities who need particular services or facilities and customers in rural areas for whom the actual cost of service might otherwise be prohibitively expensive.
- 2.3 The provision of USO is not cost free. If services are to be made available to those who might not otherwise be able to afford them (or consumers who live in rural areas the market might not serve), this requires a subsidy from other users of the telephone network. While there are social and economic arguments in favour of these cross subsidies, it is also essential that they are targeted effectively. If, for example, there are to be special schemes at lower prices, this involves cross subsidies and should be focussed on low income consumers. To achieve this objective without means testing is not easy. While Ofcom endeavours at all times to operate in accordance with the regulatory principle of a bias against intervention, in this area there may be a need for slightly more detailed regulation in order to ensure the effective targeting of limited resources.

## The legal framework

- 2.4 Ofcom imposes certain conditions on all providers, such as requirements in relation to disconnection. In addition, using objective, transparent and non discriminatory criteria, Ofcom has designated BT and Kingston to provide the following specific further services, all of which have to be offered at uniform prices across the UK:
- A connection to the public telephone network at a fixed location, following a reasonable request, which includes functional internet access;
  - At least one scheme for consumers with special social needs who have difficulty affording telephone services;
  - public call box services; and
  - services for customers with disabilities.
- 2.5 BT and Kingston are also obliged to make sure that charges for USO services do not entail payment for unnecessary additional services, to provide free itemised billing and to ensure that USO services meet defined quality thresholds. BT has to provide

a relay service for textphone users and keep an up-to-date database and provide directories and the database contents to other providers.

- 2.6 Ofcom has reviewed the universal service obligations to ensure that they meet the needs of customers as demand and technology changes and in accordance with its legal duties under the Communications Act. Ofcom's principle duty is to further the interests of citizen-consumers. In performing this duty it is also to have specific regard to the elderly, the disabled, those on low income and the different interests of persons living in rural and urban areas; the needs of these people are very relevant to the USO. This review takes account of Ofcom's Strategic Review of Telecoms ('Telecoms Review'), and the European Commission's reviews of the scope of the USD launched in May 2005 and of the telecommunications regulatory framework currently underway.

### The statement and consultation

- 2.7 This statement is the third and final document published in the review. The first was a consultation document published on 10 January 2005 ('the January consultation') where Ofcom invited views on a series of options and proposals. The January consultation set out impact assessments of the options:  
<http://www.ofcom.org.uk/consult/condocs/uso/main/>
- 2.8 The second was a statement and further consultation document published on 30 June 2005 ('the June statement') where Ofcom set out our conclusions from the review and proposed a series of changes to conditions, directions and guidance to implement these conclusions. Ofcom received 50 responses; non-confidential responses are published on Ofcom's website:  
<http://www.ofcom.org.uk/consult/condocs/uso/statement/responses/>
- 2.9 In this statement Ofcom summarises the proposals set out in the January consultation and June statement and the responses received. We then set out our conclusions and, where relevant, the legal changes to implement them.

### Conditions relating to customers with disabilities

- 2.10 Ofcom has identified legal implementation issues in the context of the dispute raised by ntl, Kingston Communications, T-Mobile and Vodafone against BT's increase in the connection charges to the TextDirect service (case number CW/00847/06/05). We intend to consult separately on our proposals for resolving these issues in the spring but remain fully committed to the availability of the relay service.
- 2.11 It must be strongly emphasised that Ofcom's policy with regard to the provisions contained in the General Conditions has not changed. We fully intend to ensure that the existing range of services and facilities is maintained.

### Longer term developments

- 2.12 This review is about the current scope of USO as permitted by the framework of the USD. It focuses on the shorter term issues of what more can and should be done now. Alongside this USO review, Ofcom carried out the Telecoms Review, which considered broader policy issues around the provision of universal service in the medium to longer term. These included issues of extending USO to broadband, the use of mobile to fulfil USO requirements and the provision and funding of USO in an effectively competitive market. The Telecoms Review's conclusions are set out in on Ofcom's website. ([http://www.ofcom.org.uk/static/telecoms\\_review/index.htm](http://www.ofcom.org.uk/static/telecoms_review/index.htm) )

- 2.13 Longer term issues are also being considered at a European level. The European Commission's communication on USO concluded that mobile services need not be included in USO at this stage because the existing level of penetration is so high and services are generally affordable, and that broadband services should be excluded because they are only accessible by a minority of EU citizens and so do not, at this stage, constitute services which meet the criteria meriting inclusion in USO. ([http://europa.eu.int/information\\_society/policy/ecomm/doc/info\\_centre/communic\\_reports/universal\\_service/com\\_2005\\_203\\_en.pdf](http://europa.eu.int/information_society/policy/ecomm/doc/info_centre/communic_reports/universal_service/com_2005_203_en.pdf) )
- 2.14 In its response to the review, while agreeing that there is currently no case for imposing separate USO obligations on mobile telephony, the UK argued that increased fixed-mobile convergence means that at some stage over the next decade mobile may replace fixed as the primary means of connection to services delivered by electronic communications networks for some customers, and that USO applying to voice and narrowband data could therefore evolve to a 'platform neutral' obligation, for which wired or wireless technologies could be used.
- 2.15 As regards broadband services, the UK agreed that imposing a USO for broadband at this time would be undesirable because the broadband market is still developing and the Government is determined to take a technology neutral approach and let the market decide which technologies are most appropriate for different circumstances. By imposing a USO and in choosing which suppliers were required to fill that obligation, the Government would define one particular technology as broadband. As well as conflicting with the Government's technology neutral approach, this could lead to imbalance in the market, less competitiveness and less consumer choice.
- 2.16 The UK felt it would not be appropriate to rule out the possibility of imposing a USO for broadband at a future date, when market circumstances may dictate the requirement for alternative solutions and that member states should therefore have a full range of potential options at its disposal. The response explained that the UK is presently actively consulting public sector bodies and private sector operators to identify alternative solutions to deliver ubiquitous next generation networks that may avert the requirement for a USO.

## Section 3

# Special Tariff Schemes & Disconnections

- One of the key strands of USO is the requirement on BT and Kingston to ensure that all customers can afford to obtain and retain telephone service.
- To achieve this goal, BT and Kingston provide special tariff schemes that target customers with low incomes. BT currently offers the Light User Scheme (LUS) and In Contact (IC); Kingston offers Basic Call and Basic Contact.
- BT's existing schemes are not means tested and use a proxy of low use in order to attract low income customers. This works does not work perfectly: around 60 per cent of current LUS and IC members are from low-income households.
- A more targeted scheme would have benefits. Ofcom consulted in January on a BT proposal for a new scheme for low income households. Responses called for improvements to the scheme and expressed concerns over the likely take-up.
- Following further discussions with Ofcom, BT made several changes to the proposal increasing the benefits and simplifying the eligibility criteria.
- Responses broadly welcomed these improvements but expressed concern over the eligibility criteria arguing that all those who receive Pension Credit or Job Seekers Allowance should be eligible. The criteria have been revised to meet these concerns.
- BT will now proceed to implement the new scheme during 2007.
- In order to ensure that customers stay connected, disconnections policy is an interlinked and vital aspect of USO.
- The number of residential customers that BT disconnects has remained constant for several years. Ofcom research suggests that BT has not been promoting its debt management and prepay services effectively to customers experiencing problems.
- BT has made some changes to its procedures and these appear to be beginning to show results. Disconnections have fallen during the course of this review and the number of customers on its prepay scheme have risen.

## Schemes: Background

- 3.1 The ability to obtain a telephone service, and when connected to remain connected, is an integral aspect of Universal Service. One way this is achieved is through special tariff schemes aimed at customers who are on low incomes or have special social needs that would not be provided under normal commercial conditions.
- 3.2 The requirement for USPs to provide special tariff schemes is implemented through a Universal Service Condition on BT and Kingston, requiring them to make available one or more schemes the effect of which is to assist consumers who have difficulty affording telephone services. Each scheme must comply with any direction which Ofcom may from time to time make which may specify, amongst other things: the requirements to be met by a scheme; the criteria to be applied by BT or Kingston in deciding which of its consumers are entitled to the benefits of a scheme; and/or the

date of the introduction of a scheme. To-date no direction in relation to special schemes has been issued by Ofcom.

- 3.3 BT provides two special tariff schemes: the Light User Scheme (LUS) and In Contact (IC). LUS currently has around 1.1m customers. Normal line rental charge and installation costs apply but users receive a rental rebate if call charges are less than £15.07 per quarter. IC is a low cost service that combines post and pre-pay which has around 55,000 customers. The connection charge and line rental are billed for and are post-paid; calls are pre-paid using cards purchased at selected retail outlets. Calls are charged at a flat rate of 10p per minute.
- 3.4 The BT schemes use a proxy of low use in order to attract low income customers. Ofcom's research into LUS and IC suggests that this is partly achieved: around 60% of users are from low-income households.
- 3.5 Kingston has two low cost schemes, Basic Contact, an incoming calls only scheme (with the exception of emergency calls and fault repairs) and Basic Call which allows for outgoing calls by purchasing a prepaid card. Take up of both schemes has been small to date (112 and three respectively). Kingston has recently launched a new product *Social Access Package* available to customers in receipt of certain state benefits. This has a reduced line rental charge combined with a restriction on the number of non-local calls customers can make monthly.

### **New targeted BT scheme: January consultation**

- 3.6 In the January consultation document, Ofcom sought views on the current schemes and on a new scheme proposed by BT which it would provide to comply with its USO. Under BT's original proposals, a new targeted scheme would be made available for customers who have a household income below £10 400pa and who are also in receipt of significant means tested state benefits. The standard connection charge would apply; quarterly line rental would be £14.50, reduced to £11.50 for customers paying by direct debit, including an inclusive call allowance of £1 per quarter. Local and national call charges would be charged at 10p per minute. There would be certain exclusions from the scheme, including mobile phone users. Ofcom invited views on three options: Retain the existing scheme, not proceeding with BT's proposals; proceed with the scheme as proposed by BT; or proceed with a new targeted scheme but in an amended form.
- 3.7 Responding to the consultation, BT argued that telephony was now affordable for the vast majority of consumers and that the proposed scheme was appropriate. Consumer stakeholders were fairly evenly divided between options to retain the existing schemes and the proceeding with a new scheme if modified. Several areas of concern were identified by respondents suggesting modifications in particular that: the tariffs do not provide greater benefits than LUS; customers only benefit from line rental reductions if they pay by direct debit; the virtually complete exclusion of mobile customers is inappropriate given the high level of mobile penetration; and it is difficult for eligibility criteria based on annual income to fairly reflect the needs of larger households or households with higher costs, or to address the changing circumstances of customers with variable or seasonal incomes.

### **New targeted BT scheme: June statement**

- 3.8 Following discussions with Ofcom, BT proposed several changes to the tariffs and eligibility criteria with the aim of ensuring that most customers would be better off on the new scheme than on existing social tariff schemes and to simplify the eligibility

criteria. These revised proposals were set out in the June statement. The proposals are set out below.

### Connection charge

- 3.9 A connection charge will only apply to customers new to BT where a line does not exist. The standard connection charge would be paid over five separate payments.

### Line Rental

- 3.10 The line rental will be £14.50 a quarter (compared with the lowest line rental tariff of £34.50 a quarter for standard customers). A £3 quarterly discount would apply for customers who pay by direct debit or monthly payment plan (also requiring a direct debit discount). The Inclusive Call Allowance (ICA) will be increased from £1 to £2 per quarter, effectively allowing 20 minutes of free local or national calls each quarter. An Early Payment Discount (EPD) is being introduced which will provide customers not using DD or MPP but who pay their bills within eight calendar days with an additional £2 ICA. The EPD will also be available to pre-pay customers.

### Call charges

- 3.11 The charges will be 10p per minute local and national calls; BT Together charges for other calls.

### Eligibility Criteria

- 3.12 Eligibility was simplified by removing the annual income criteria and instead was focussed on two main benefit groupings. Under BT's proposals the scheme would be available for customers who receive Income Support or both Pension Credit and Housing Benefit. Customers would self declare to BT that they are eligible.
- 3.13 As with LUS and IC, customers who use Indirect Access (IA) or Carrier PreSelection (CPS) would not be eligible for the new scheme. Customers with monthly mobile contracts would be excluded from the scheme. Prepay mobile users would not be excluded. BT would however indicate in its marketing material that the scheme is not intended for high-use pre-pay customers, ie those spending on average over £10 a month. The contract mobile exclusion would not apply to disabled or chronically sick users.

**Fig 3.1 BT's proposals for the special scheme, June 2005**

	Tariff/feature
Connection	Standard connection. Default to be spread the charge across five payments.
Payment method	Post pay and pre pay available
Rental	£14.50pq either £3 discount for DD and MPP or £2 ICA for Early Payment £2pq inclusive call allowance

Calls	10ppm local and national calls; BT Together 1 charges for other call types
Eligibility	Customers in receipt of Income Support or Pension Credit and Housing Benefit. Customers would self-declare.
Exclusions	Customers who use IA and CPS would not be eligible for this tariff. Customers who are on monthly contract mobiles excluded. Scheme also not aimed at higher prepay users (over £10 a month) who will be discouraged in marketing material. No exclusion for disabled or chronically sick mobile users.

3.14 Ofcom welcomed the changes to improve the tariff and eligibility criteria. Ofcom agreed that the scheme should not be available to IA and CPS customers, since the scheme is not intended to subsidise the rental charge of customers who make calls on other fixed providers' network. Overall Ofcom considered the targeted scheme modified as proposed by BT to represent a viable replacement for the existing social tariff schemes.

### Encouraging take-up of the new scheme

3.15 Several respondents to the January consultation expressed concerns about the likely take-up of the new scheme. To address these concerns Ofcom proposed two additional measures in the June statement:

- to allow BT to focus its marketing on the new scheme, LUS and IC should not be available to new customers from the launch of the new targeted scheme;
- to protect customers against slow take-up and to give BT an incentive to promote the new scheme, BT should not close LUS or IC to existing customers until the new scheme has at least 600,000 customers.

3.16 Ofcom invited comments on the new proposals.

### Responses to June statement

3.17 Most responses, including Ofcom's Consumer Panel, commenting on the proposals welcomed the significant changes to the new scheme that BT had proposed. In particular the introduction of an Early Payment Discount (EPD) was widely welcomed as an innovative approach to give customers without a bank account or who are reluctant to use direct debit an opportunity to receive a benefit from prompt payment. The removal of the exclusion of prepay mobile users, the increased Inclusive Calls Allowance and the 600 000 target for customers on the new scheme were also widely supported.

3.18 There was more concern expressed about the eligibility criteria. The removal of income-related criteria was seen by many respondents as an important improvement to the original proposals, removing a potentially significant barrier to customers adopting the scheme. However, many felt that the range of qualifying benefits identified by BT were too narrow. In particular there was a view that customers in receipt of Job Seekers Allowance and all those in receipt of Pension Credit should be eligible for the new scheme. On Pension Credit respondents argued that recipients have the same disposable income irrespective of whether or not they receive

Housing Benefit. They argued that low-income pensioners receiving Pension Credit but not Housing Benefit (because they are homeowners) should not be penalised and be ineligible for the new scheme simply because they do not rent their home. Some argued that, because approximately one third of those eligible for Pension Credit do not claim it, all those eligible for Pension Credit should be able to join the new scheme.

- 3.19 BT explained that criteria based on income support and both Pensions Credit and Housing Benefit would equate to a target market for the new scheme of more than 3m households. BT argued that this gives a much larger target market than the government definition of low income households and uses those benefits which are generally accepted as being awarded to members of society in the most financial difficulty.
- 3.20 A few respondents expressed concern that a benefits-related approach would lead to low take-up and argued that non-targeted schemes – LUS and In Contact - should be retained. One respondent favoured income based eligibility, given that government benefits are not taken up by all those eligible.

### Ofcom's conclusions

- 3.21 Ofcom continues to believe that special schemes should be targeted at vulnerable customers who have difficulty affording telephony. This is in line with the spirit of Article 9 of the USD which says that Member States may require USPs to provide tariff options or packages to consumers that depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or special social needs are not prevented from accessing or using publicly available telephone services. This is also reflected in the Universal Service Order and Universal Service Condition 2.
- 3.22 The provision of special tariff schemes is not cost free; they require a subsidy from other users of the telephone network and it is essential that they are targeted and delivered effectively. LUS and IC do not currently fully meet this objective. Ofcom therefore continues to support a more targeted scheme to replace LUS and IC.
- 3.23 We continue to believe that eligibility criteria based on the receipt of state benefits are the best way to achieve this. The level and eligibility for benefits will have already been established by government bodies. The alternative income-based approach proposed in the January consultation would be more intrusive, requiring BT to enquire about and establish customers' income, and would create difficulties in setting the appropriate income levels that reflected household size and changes in employment and circumstances.
- 3.24 In the June statement Ofcom indicated that further input from stakeholders would be needed on the appropriate benefits for eligibility. Ofcom recognises the concern expressed by some respondents, in particular in respect of the absence of Job Seekers Allowance from the list of eligible benefits and the limitation of eligibility of customers over 60 to those in receipt of both Pension Credit and Housing Benefit.
- 3.25 Since the consultation BT has confirmed that all those in receipt of income-based Job Seekers Allowance will be eligible for the new scheme. Also BT has agreed that all customers receiving Pension Credit will be eligible for the scheme. There will therefore be no requirement for those receiving Pension Credit also to be receipt of Housing Benefit in order to be eligible for the scheme. Ofcom welcomes and strongly endorses these changes made by BT.

- 3.26 BT has also confirmed that prices for inland geographic calls particular to the scheme and rental on the scheme will not rise above the annual retail price index.

## Marketing

- 3.27 Ensuring smooth migration of existing LUS and IC customers and establishing an effective marketing campaign for new customers will be crucial to the success of the new scheme. It is essential that BT works closely with the relevant stakeholder bodies – in particular those with close contacts with older and low-income customers, such as Age Concern and Citizens Advice Bodies, government bodies – in developing its plans. This will be important for BT in obtaining advice from on marketing approaches to reach the target groups and in seeking to establish new channels through stakeholders to promote the product.
- 3.28 In order to ensure a smooth migration process BT will use a tailored communications approach to current social telephony scheme customers. Ofcom intends to monitor take-up, customer reaction and the impact of the new scheme with stakeholders and through research.
- 3.29 BT has stressed the importance they attach to reaching the right customers and they are keen to explore new methods to achieve this aim. BT has recently met with Citizens Advice to explore ways to jointly promote the scheme to eligible customers, and meetings with other interested parties are being arranged.

## Conclusions

- 3.30 All other aspects of the scheme remain as set out in the June Statement and summarised in Annex 1. This includes the requirement for 600 000 customers to be actively using the scheme before LUS and IC begin to be withdrawn.
- 3.31 On this basis Ofcom confirms our support for BT's new scheme and for BT's plans to proceed with the development and launch of the product.
- 3.32 BT expects to launch the new scheme in early 2007.

## Disconnections: Background

- 3.33 Universal Service is not just about enabling people to become connected, it is also important that all consumers, but particularly low income consumers, stay connected. The Universal Service Directive deals with this by putting an obligation on Member States to authorise specified measures to cover non-payment of bills. This is also reflected in the USO Order and is implemented via General Condition 13. This states that when providers take steps relating to disconnection they should be: proportionate and not unduly discriminatory; give due warning beforehand of service interruption or disconnection; and except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the service concerned, as far as technically feasible. Providers have agreed a voluntary code of practice which explains how they will deal with customers who may be liable to disconnection.
- 3.34 For some time consumer stakeholders have expressed concern about high levels of disconnection for debt. Two measures of disconnection are reported by BT: 'temporary disconnection' where the customer cannot receive or make calls but remains a BT customer; 'permanent cessation' which follows a few weeks later if payment is still not made or a payment plan agreed and where the contract is ended. Many customers make payment or agree a plan between these two stages. BT's rate

of residential disconnections has been stable for several years: around 1 million temporary disconnections a year and around 680 000 permanent cessations of service.

- 3.35 Ofcom research for this review carried out during 2004 examining the level of disconnections showed that customers who were disconnected were more likely than average to be in DE social groups, had lower incomes and tended to be younger than average. Almost half (46%) of disconnected customers felt that they were not given adequate opportunities by BT and a similar proportion (44%) felt that BT were unfair in their handling of the disconnection. A significant proportion of those who were disconnected claimed that this caused them a lot (37%) or some (36%) difficulties. Prior to disconnection only a quarter (24%) used a scheme to help control or reduce costs. Two-thirds said that they had not been offered any scheme to help them manage their bill payments. Amongst those that had not taken up any of these schemes prior to disconnection over half (54%) said that some sort of pre-pay scheme would have helped them to avoid disconnection.

### January consultation

- 3.36 In the January consultation document, Ofcom pointed to BT's existing range of services that should help address the needs of customers with affordability and debt management problems:
- Call Levels Customers agree a quarterly call level which represents the maximum value of calls they would expect to make in a quarter. If the call level is reached, BT will contact the customer to agree a course of action.
  - Monthly Payment Plans Allows customers to pay a monthly set payment by direct debit based on their average bill amount.
  - BT Payment Card aimed at customers without a bank account, it allows customers to make payments to BT at Post Offices and PayPoints
  - Pay & Call BT's commercial pre-pay scheme
  - USO Special Tariff Schemes currently LUS and IC
- 3.37 Ofcom's view was that if these services were promoted actively to customers in contact with BT's debt management centre, the levels of disconnections could be significantly reduced and suggested that one approach would be for all customers prior to disconnection to be offered a prepay scheme as an alternative to disconnection.
- 3.38 BT argued that telecoms, unlike energy, is not seen as a priority debt by advice agencies or customers and so higher disconnection levels are to be expected. BT also argued that the ease of access to substitutes such as mobiles encourages customers not to prioritise debts. Nevertheless BT explained that it has increased its promotion of Pay & Call: all termination notices now provide information on Pay & Call and 1.2m letters and that take-up of Pay& Call has increased.
- 3.39 There was general agreement amongst consumer stakeholders that BT's disconnection levels are too high and that BT should do more to promote its existing debt management tools, in particular prepay, to those experiencing payment difficulties. Some responses argued that Ofcom should set BT targets to reduce disconnections, progressively leading to a complete ban. Others felt that specific

measures should be taken to ensure that emergency access and incoming calls continue to be permitted, in particular for vulnerable customers.

### June statement

- 3.40 In the June statement Ofcom concluded that BT's disconnection levels could be significantly reduced if it promoted its special schemes, in particular its pre-pay products, more effectively. Ofcom welcomed the recent improvements BT has made to the marketing of Pay & Call and indicated that it is important that these efforts continue.
- 3.41 BT has set itself a target to have 180 000 customers on Pay & Call during 2006. Ofcom will be monitoring take up of this scheme and the level of disconnections. Ofcom concluded that if BT's target for Pay & Call is not met and similar growth not sustained in subsequent years, Ofcom will consider proposing as part of the next universal service review that BT puts in place alternatives to disconnection, such as placing customers on prepay instead of disconnection or restricting service rather than fully disconnecting.

### Developments since the Statement

- 3.42 Since November 2005 BT has launched several initiatives to improve the responsiveness of their credit management procedures. These include measures to help customers understand and activate their Pay & Call accounts and to increase contact with customers in debt at earlier stage. These appear to be having some positive effect with annual temporary disconnections set to fall to around 920 000 and permanent cessation to 580 000 by the end of 2005/6.
- 3.43 Ofcom welcomes these improvements and urges BT to continue to review and improve its processes.

## Section 4

# Public Call Boxes

- PCBs provide a service that is valued and needed by many people without a land line or a mobile or those away from home, who cannot use their mobile.
- PCBs are particularly valued in rural areas, some of which suffer from lack of mobile coverage and in communities, rural and urban, where there are disadvantaged and vulnerable consumers who still rely heavily on PCBs.
- BT and Kingston are each required under the USO to ensure the adequate provision of PCBs to meet the reasonable needs of end-users in terms of numbers, geographical coverage and quality of services.
- Revenues from BT's PCBs have been falling and, according to BT, about 60 per cent of its PCBs are now unprofitable.
- Ofcom has reviewed the approach to regulating PCBs to establish an appropriate balance between delivering adequate local provision while enabling BT and Kingston to respond to changing commercial circumstances.
- Ofcom's view is that what constitutes adequate coverage is best determined at a local level and this is best ensured by continuing the right of a local public body to object to the removal of the last PCB from a site ('the local veto').
- The maintenance of the local veto will be supported by measures to make the process more transparent, accountable and consistent.
- The local veto will be held at district or unitary authority or equivalent level. Other local public bodies will continue to be consulted. The consultation period is being extended from 42 to 90 days.
- The definition of "site" is being amended to a walking distance of 400 metres from a PCB; how a site is defined determines which PCBs are subject to the local veto.
- Ofcom is publishing guidance on procedures for PCB removals, including factors to be taken into account by public bodies when considering requests for PCB removal.
- BT and Kingston are to have greater flexibility to make use of cashless PCBs - up to 30 per cent of PCBs can be cashless.

## The payphone market

- 4.1 A PCB is a public pay telephone located on a public highway. There are approximately 67,000 PCBs in the UK, of which around 64,500 are provided by BT. Ofcom research (published in the January consultation) shows that over a third of adults use PCBs at least occasionally and seven per cent use them regularly. The most frequent users of PCBs are younger consumers, consumers from lower income groups and those consumers with a mobile phone only or those without a fixed or mobile telephone.

- 4.2 BT Payphones is a cash positive and profitable business. BT's regulatory Financial Statements 2004 show that BT Payphones' turnover was £176 million per annum and achieved a return of £60 million. These figures have been revised by Ofcom to £152 million and £29 million respectively for 2005, based on data provided by BT. Nevertheless, BT's revenues from payphones have been falling – by around 47 per cent between 2000 and 2006. BT argues that this trend is mainly due to increased mobile phone penetration.
- 4.3 The contrast of the continuing profitability of the business overall while revenues are declining reflects BT's success in maximising the profitability of parts of its PCB network. Many PCBs in city centres are highly profitable; others primarily in rural areas are highly unprofitable.
- 4.4 According to BT, the average annual running costs per PCB are £1,673. This figure is based on BT's operational costs and includes its indirect costs. BT advises that of its PCBs about 26,000 (40 per cent) are profitable and 38,500 (60 per cent) unprofitable. Of the unprofitable PCBs, about 18,000 PCBs do not cover their operational costs - for example cash collection, cleaning, maintenance and vandalism. The balance of 20,500 PCBs cover their operational costs but do not cover their indirect costs - for example people costs, external contracts, accommodation, depreciation, research and development.
- 4.5 BT is undertaking a rationalisation programme with the aim of reducing the number of unprofitable PCBs and so improving the profitability of its business. It has already removed about 28,500 since March 2002. Kingston has not yet commenced a rationalisation programme.
- 4.6 BT and Kingston have to ensure that the USO is met and follow Ofcom requirements set out in a Direction, published in 2003, before they remove the last PCB from a site. "Site" is defined as any area within a walking distance of 100 metres from a PCB. This means that if there are two PCBs within 100 metres of each other, BT and Kingston can remove one PCB without consultation. If they want then to remove the remaining PCB, BT and Kingston have to follow the requirements set out in the Direction.
- 4.7 The Direction requires BT and Kingston to display a notice on the PCB which they propose to remove informing the public of the proposed change and setting out the period for representations (42 days) and to whom such representations can be made. Notice of the proposal must also be given to relevant local public bodies setting out the nature and effect of the proposal and that objections may be made by the bodies to which the notice has been given. Public bodies that have to be notified are:
- The local planning authority;
  - The local parish council (in the case of England);
  - The local community council (in the case of Scotland and Wales); and
  - In Northern Ireland, the local council and any appropriate local community groups.
- 4.8 BT and Kingston must not remove the PCB if they have received a written objection by any of these public bodies within the 42 days period for representations. Any such objection must state that it is an objection to the proposal and must provide reasons for this objection ('the local veto').

- 4.9 BT has argued that these rules are now preventing it making appropriate commercial decisions. About 50 per cent of proposed removals are attracting the local veto.

## Approaches to regulation of PCBs

### Background

- 4.10 Ofcom identified three strategic approaches for consideration:
- Approach 1: Retain but modify the current arrangements; local public bodies would keep their veto but the process would be made more transparent, accountable and consistent;
  - Approach 2: Define a USO PCB, through the use of a set of criteria to make a calculation; a defined USO PCB would be protected from removal; or
  - Approach 3: Replace detailed regulation on BT and Kingston with a general requirement to meet the reasonable needs of PCB users.
- 4.11 Ofcom supported approach 1 on the basis that local input should be central to the decision-making process, but recognising that changes to procedures were needed to make the consultation process work more effectively, and to allow BT and Kingston to respond reasonably to changes in the market.

### Responses to the consultation

- 4.12 The overwhelming majority of stakeholders responded in support of approach 1 and the principle of delegation arguing that what constitutes adequate coverage is best determined at a local level. However, BT believes that it is not appropriate or practical for Ofcom to delegate this power to public bodies and instead supports approaches 2 or 3 as offering the most proportionate, transparent and non-discriminatory approach to PCB removals. Most respondents were concerned about the flexibility and practicality of a criteria-based approach and the removal of the local community from the decision-making process (approaches 2 and 3).

### Ofcom's conclusions

- 4.13 Ofcom continues to support approach 1 and the retention of the local veto. Local public bodies are in the best position to bring to BT's and Kingston's attention particular factors in relation to specific sites. Ofcom is satisfied that it can delegate this power to public bodies and that such bodies have the power to exercise the local veto.
- 4.14 Although approach 2 would provide consistency across the UK, it would not take account of specific local factors. Approach 3 would not be fully transparent and would not allow local input.
- 4.15 In supporting approach 1, Ofcom recognises that the current arrangements can be improved to increase transparency and consistency. Ofcom considered a number of issues in relation to the procedures. Our conclusions are set out below.

## Definition of a 'Site'

### Background

- 4.16 The definition of a 'site' is crucial as to whether or not BT and Kingston are required to consult with and obtain consent from relevant public bodies before a PCB can be removed.
- 4.17 Ofcom undertook research (published in the January consultation) across a wide age range of consumers, including older consumers. It indicated that there was an urban/rural split in terms of expectations of distance in relation to a PCB. In general, a maximum five minutes' walk was deemed reasonable in urban areas, and 20-30 minutes' walk in rural areas.
- 4.18 Ofcom invited views on whether the definition should be extended from 100 to 200, 300 or 400 metres. 400 metres would represent approximately five minutes' walk at normal walking pace.

### Responses to the consultation

- 4.19 Some respondents preferred no change to the definition, suggesting that any increase could impact adversely on the distance older people and people with disabilities will have to travel to reach another PCB. However, most stakeholders who responded on this issue supported an increase in the definition to 200, 300 or 400 metres.
- 4.20 Ofcom's Consumer Panel acknowledged the research in this area and stated its belief that the 400 metres proposal was evidence based and had not been shown to discriminate unduly against particular persons or against a particular description of person and was proportionate to what the modification is intended to achieve. BT stated that it will not peremptorily remove PCBs located within the site definition of another PCB but will look at each PCB on a case-by-case basis.

### Ofcom's conclusions

- 4.21 Ofcom has considered fully respondents' concerns about extending the site definition to 400 metres. However, Ofcom is persuaded that the evidence of the research and the support for an increase from most stakeholders who responded on this issue, together with the changing commercial conditions in the PCB market as set out in paragraphs 4.2 to 4.5, justifies a change in the definition of site to any area within a walking distance of 400 metres from the PCB. Ofcom considers that this represents a sensible balance between ensuring an adequate PCB network to meet the reasonable needs of end-users and allowing BT and Kingston to respond flexibly to commercial pressures.
- 4.22 Following discussions with BT and Kingston, both agreed that the payphone notice informing the public of any proposed removal must include a free-call number which they can phone to check where to find the nearest alternative PCB. BT and Kingston also agreed that the written notice to the relevant public body must include a link to guidance on Ofcom's web site.
- 4.23 Ofcom has therefore amended the definition of "Site" under Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification (Annex 2) and the Direction (Annex 3). The Direction has also been amended to include a requirement to provide

a free-call number which the public can phone to check where to find the nearest alternative PCB.

## Public bodies with the local veto

### Background

4.24 The Direction listed the local planning authority, parish council (England), community council (Scotland and Wales) and the local council and community groups (NI) as bodies who had the local veto. The total number of such public bodies is about 12,000. This creates a significant administrative burden for BT. Furthermore, the more public bodies the more difficult it is to achieve a consistent approach. Ofcom invited views on a revised list of higher-level public bodies to whom to delegate the right of veto.

### Responses to the consultation

4.25 A number of councils, particularly parish and community councils indicated a desire to retain the current list of public bodies with delegated powers. Some respondents raised concerns that unitary councils in Scotland do not have consultation mechanisms in place which allow local issues to be discussed with local communities.

4.26 Other stakeholders, including many councils, responded in support of a revised list of higher-level public bodies. Respondents recognised that higher-level public bodies have various consultation mechanisms in place which allow local issues to be discussed with local communities. There was strong support in England for district councils to hold the local veto in two-tier local authority areas. The Welsh Assembly Government suggested that in Wales reference should be made to “county/county borough councils” because the use of ‘unitary county’ would exclude about half the unitary authorities in Wales since they are deemed as “county boroughs”.

4.27 However, most respondents recognised the importance of involving the local community and local public bodies, such as parish and community councils, in the decision-making process.

### Ofcom’s conclusions

4.28 The number of public bodies with the veto creates a significant administrative burden and made it more difficult to achieve a consistent approach. To simplify procedures, it is Ofcom’s view that the veto should be held by a single public body in each area but that the local community and other local public bodies should continue to be consulted, with their views passed to the body with the local veto.

4.29 Ofcom has noted the concerns of some respondents that some higher-level public bodies do not have consultation mechanisms in place which allow local issues to be discussed with local communities. However, this view is not supported by other respondents. While public bodies must decide themselves what mechanisms they have in place to ensure meaningful consultation, Ofcom has produced guidance to assist public bodies for this purpose.

4.30 Ofcom has therefore concluded that the local veto will be held: in England by District Councils (in two-tier local authority areas), Metropolitan Councils, London Boroughs, Unitary Councils, Corporation of London and Council of the Isles of Scilly; in

Northern Ireland by Unitary Districts; in Scotland by Unitary Councils; and in Wales by County and County Borough Councils.

- 4.31 It is Ofcom's view that these arrangements will promote transparency and consistency while ensuring that bodies such as parish and community councils retain a key role in the decision-making process. Ofcom has therefore amended the Direction (Annex 3) and published guidance (Annex 4) to reflect this approach.

## Consultation process

### Background

- 4.32 Ofcom invited views on extending the consultation period from 42 to 90 days.

### Responses to the consultation

- 4.33 The majority of respondents supported extending the consultation period to 90 days - this period would enable public bodies to effectively engage local communities and obtain a wide range of views on proposed removals. BT suggested that a 60 days period is adequate for consultation, referring to the introduction of new guidance for public bodies on procedures for the complete removal of PCBs. Powys County Council suggested that 120 days would ensure a wide and proper consultation and co-ordinated response.

### Ofcom's conclusions

- 4.34 Given the support for this proposal, Ofcom has concluded that the consultation period will be amended to 90 days. This will allow sufficient time for people to see the notice on the PCB, for public bodies to comply with the consultation and notification requirements in the Act and for a decision. The Direction has been amended to implement this policy (Annex 3).

## Obligation on public bodies to provide reasons

### Background

- 4.35 Public bodies have to provide reasons when objecting to the removal of a PCB. Between January and October 2004 the average objection rate across the UK to BT's planned removals was 43 per cent. The current figure is about 50 per cent. Many objections relate to social inclusion for example proximity to communities with relatively low fixed-line phone penetration or areas with no mobile phone coverage. Other reasons are sometimes provided for example "the light from the payphone illuminated the parish council notice board at night".
- 4.36 To assist public bodies in carrying out their duties and to promote consistency of decisions between bodies, Ofcom invited views on publishing guidance. Ofcom also invited views on the factors which might be considered objectively justifiable and relevant to public bodies' decisions.

### Responses to consultation

- 4.37 Respondents welcomed the idea that Ofcom could publish guidance. There was wide-ranging support for a number of different factors. However, the ability to make emergency calls and mobile coverage are two factors mentioned by most respondents. Other factors mentioned include:

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- Number of households and population in the area
  - Housing type and social-economic make-up of the area
  - Incidence of vandalism to the PCB
  - Profitability and annual revenue of a PCB
  - Volume and type of calls from a PCB
  - Distance to the nearest alternative PCB
  - Accessibility of the alternative PCB in terms of parking, public transport and physical obstacles for example a river
  - Level of phone ownership in the area
  - Rurality of an area
  - Nature of the area e.g. tourist area, close to a children's home or other similar accommodation, remoteness
- 4.38 Some respondents suggested that "low or sporadic mobile coverage" should replace 'no mobile coverage' and that 'emergency calls' should not be limited to calls to the emergency services. BT would like to see greater clarity on what might be considered reasonable objections to the removal of PCBs.

## Ofcom's conclusions

- 4.39 The obligation for public bodies to provide reasons is a proportionate obligation in relation to their power to object to the removal of the last PCB from a site and improves the transparency of the procedure. In exercising their delegated powers, public bodies should provide reasons for their decision in writing and comply with the consultation and notification requirements in the Act.
- 4.40 Decisions must be objectively justifiable, not discriminate unduly, be proportionate to what is intended to achieve and transparent. Public bodies must act in accordance with the six Community requirements, including the requirements to promote competition and to promote the interests of all EU citizens.
- 4.41 To assist public bodies in carrying out their duties and to promote consistency of decisions between such bodies, Ofcom has published guidance on the consultation and notification requirements in the Act. The guidance includes a non-exhaustive list of factors which may be referred to by a public body to make its decision. The guidance is drafted to reflect comments from the consultation and to take into account the practical availability of information. Key factors are:
- Housing type in the area;
  - Number of households in the area;
  - PCB revenue; and
  - Emergency calls.

- 4.42 Information about the housing type and the number of households in the area should be available to public bodies. PCB revenue is a reasonable measure of PCB usage and one indicator of its value to the community. In addition, BT advised in its response that it could provide such information in the written notice to public bodies.
- 4.43 While BT does not collect data on the number of calls made to the emergency services from PCBs and there were concerns about the availability of detailed information about mobile coverage, these factors are considered important by most respondents.
- 4.44 While public bodies must decide themselves what mechanisms they have in place to ensure meaningful consultation, Ofcom has produced guidance to assist public bodies for this purpose. A public body may refer to other factors such as the nature of the area for example a tourist area or close to a children's home or similar accommodation. However, any decision must comply with the requirements in paragraph 4.40 above. The guidance can be found at Annex 4.

## Cashless PCBs

### Background

- 4.45 BT and Kingston must currently ensure that at least one PCB at a site offers cash payment facilities except for sites which, for historical crime-related reasons, have no cash payment option. BT states it has experienced a high incidence of 'cash attacks' on low revenue PCBs in rural and semi-rural locations and that the annual cost of crime to its PCB business is substantial. Ofcom invited views on whether the existing requirement should be retained or amended and proposed that BT and Kingston be required to ensure that at least 70 per cent of their PCBs offer cash payment facilities.

### Responses to the consultation

- 4.46 Most respondents supported the relaxation of the requirement where for example PCBs are subject to cash attacks. BT stated that removing the requirement to offer a cash payment facility at the last PCB at a site would enable it to manage the cost of the payphone base more effectively and therefore retain more PCBs. BT suggested that consumers would benefit as sites previously prone to vandalism and cash attacks would be less likely to experience breaks in service and remote communities would retain PCBs in locations where cash payment facilities are not critical.
- 4.47 Most respondents also supported the proposal to require BT and Kingston to ensure that at least 70 per cent of their PCBs offer cash payment facilities. However, some respondents raised concerns about the ability to make calls and the cost of calls from a PCB other than with cash. In its response, BT stated that consumers would still be able to make a call for the existing minimum fee, using alternative payment methods for example BT Chargecard and other phonecards. However, BT suggests that the typical profile of the PCBs it would wish to convert is such that they would have very low cash usage.

### Ofcom's conclusions

- 4.48 Ofcom believes that BT and Kingston should have greater flexibility to remove cash payment facilities, in particular at sites which are subject to frequent vandalism and where the local public body has objected to a proposed removal on the grounds of the importance of the PCB for emergency use.

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- 4.49 In removing the cash payment facility Ofcom notes that under General Conditions 4 and 6 BT and Kingston are each required to ensure that the public can make emergency calls and access operator assistance services and a directory enquiry facility. Ofcom would expect BT and Kingston to ensure that the public can make freephone and reverse charge calls and, save in exceptional circumstances, provide card payment facilities. Ofcom would also expect that the public be able to make a call for the existing minimum fee using alternative payment methods.
- 4.50 Ofcom would expect BT and Kingston to consult informally with the local public body before a cash payment facility is removed. We would also expect BT and Kingston to report to Ofcom on the number of cashless PCBs.
- 4.51 Ofcom has amended the Direction (Annex 3) to reflect the requirement to ensure that at least 70 per cent of BT's and Kingston's PCBs offer cash payment facilities.

## Appeals

- 4.52 Ofcom indicated that the decision by a public body to object to a proposed PCB removal could be subject to appeal to the Competition Appeals Tribunal (CAT). In its response BT stated its concerns about the practicalities of the CAT hearing these types of appeals and that Ofcom should be responsible for decisions about PCB removals, not local public bodies. It is Ofcom view that the Act sets out that such appeals go to the CAT.

## Requests for new PCBs

- 4.53 Ofcom has amended the Direction (Annex 3) at paragraph 2.8 to provide that, "except in exceptional circumstances, where the total score is eight or less the Universal Service Provider need not grant the request." The word 'need' replaces the word "shall" and provides greater flexibility for BT and Kingston to grant a request should they wish to.

## Section 5

# Services for customers with disabilities

- One of the key services is the text relay service which is highly valued by customers. However, it needs to evolve as demand and technology change. Ofcom has commissioned a study into issues around the expansion of the service to include video relay and captioned telephony. Ofcom is encouraging the introduction of Internet Protocol ('IP') based technology which will enhance the range of services that can be provided
- The transparency and accountability of the text relay service should be improved. Ofcom will take forward the establishment of a Stakeholder Advisory Panel in discussions with stakeholders. An annual plan and report on the operation of the relay service will be published
- The requirement on providers to offer bills and contracts in alternative formats for blind or visually impaired customers is proposed to be extended to enable any customers whose disability prevents them from reading the bill or contract to request an alternative format.
- Ofcom has identified legal implementation issues in the context of the dispute between various providers and BT over connection charges to the TextDirect service and intends to consult separately on its proposals for resolving those issues in the spring

## Background

- 5.1 The June statement focused on three distinct areas of the overall universal service provision and distinctive services provided to customers with disabilities through General Conditions of Entitlement. Those areas are payphones, bill/contract provisions and the text relay service.
- 5.2 The Statement consulted on two questions involving proposed amendments to General Condition 6 ('GC6'), implementing changes relating the accessibility of Public Call Boxes (PCBs); and to General Condition 15 ('GC15'), implementing changes relating to the obligation to provide bills and contracts in alternative formats and short code number access to a Directory Enquiry Facility.

## Text Relay Service

- 5.3 Ofcom has identified legal implementation issues in the context of the dispute raised by ntl, Kingston Communications, T-Mobile and Vodafone against BT's increase in the connection charges to the TextDirect service (case number CW/00847/06/05). We intend to consult separately on our proposals for resolving these issues in the spring but remain fully committed to the availability of the relay service.

## Stakeholder Advisory Panel

- 5.4 The June Statement supported the establishment of a Stakeholder Advisory Panel to build greater transparency into the relay service's management processes. We

anticipated the panel would review Typetalk's annual plan and report and address Quality of Service issues and the adoption of a set of performance targets.

- 5.5 Inevitably the dispute between BT and the other providers over the connection charge for Text Direct has delayed the establishment of the Stakeholder Advisory Panel. It has been necessary to clarify the funding arrangements for the relay service before reaching any conclusions as to the establishment of the Panel.

### Responses to the consultation

- 5.6 Responses to the proposal for a Stakeholder Advisory Panel were made without reference to the dispute. Primarily, concerns were expressed about the panel's perceived independence if it were to be facilitated by BT. Some disability stakeholders expressed a clear preference for the panel to be facilitated by Ofcom or another independent body.
- 5.7 BT shared some of these concerns, believing there was a risk of a stakeholder perception that transparency would be compromised if it facilitated the panel. It believes that the facilitation and management should be tendered out to an independent body with costs shared amongst providers whose customers use the relay service. BT also felt that the panel should include three industry members other than BT itself.
- 5.8 The only respondent to take up the invitation to apply for membership of the panel was TAG.

### Ofcom's conclusions

- 5.9 Ofcom intends to enter into discussions with BT and other stakeholders to work out the best way forward for the Panel which we continue to believe has an important advisory role to play.

### Video relay feasibility study

- 5.10 In the June statement Ofcom proposed a feasibility study into alternative relay services, primarily video relay but also embracing captioned telephony and speech relay. The City University won the tender to carry out the study and is expected to complete its report by April. Ofcom intends to publish the outcome of the study which will provide a basis for discussions about the future scope of USO in this area.

### The accessibility of public call boxes

- 5.11 Public call boxes are currently subject to specific accessibility requirements. These are that:
- At least 75 per cent of PCBs provided in the UK (excluding Hull) and 50 per cent of PCBs provided in Hull must be accessible by reasonable means to customers in wheelchairs;
  - At least 70 per cent of all PCBs must incorporate additional receiving amplification;
  - Providers must consult with Ofcom from time to time on " ... all future material changes to the design of its PCBs where the interests of disabled persons are likely to be affected ... "

- In the June statement Ofcom proposed an incremental approach to the existing accessibility requirements by amending General Condition 6 to raise the general wheelchair accessibility and additional receiving amplification requirements to 80 per cent and to restore the requirement for PCBs to support inductive coupling.

## Responses to the consultation

- 5.12 Most responses from disability stakeholders were in favour of the proposed changes although some expressed disappointment that the targets had not been raised to 100 per cent. Some responses expressed the wish that the amended GC 6 (3) (iv) should make explicit reference to inductive coupling rather than carrying forward the wording previously used in previous conditions.
- 5.13 BT explained that although 79 per cent of its PCBs currently meet the wheelchair accessibility requirements there is a constraint on raising wheelchair accessibility requirements. This is because some 20 per cent of its installed base of kiosks is represented by the older K2 and K6 cast-iron kiosks, commonly known as red boxes, which cannot be made wheelchair accessible. Many red boxes are situated in conservation areas or have been listed. BT argues that the proposed removal of such boxes encounters particular resistance from planning authorities.
- 5.14 Two responses urged that accessibility regulation should be extended to ‘managed’ payphones, i.e. to those that are not in public spaces available to the public 24 hours a day. A respondent said that the guidance on the removal of PCBs should take account of the needs of deaf users where a PCB has textphone facilities.

## Ofcom’s conclusions

- 5.15 After discussion with BT and members of the Consumer Panel, Ofcom proposes to accept the case made by BT and not to proceed with an increase in wheelchair accessibility requirements. In a market environment where PCBs are subject to declining revenues and commercial pressures for their removal, it is foreseeable that the installed base of BT’s PCBs will diminish. Given the protection afforded to red boxes, it is likely that their proportion within the entirety of PCBs will rise, although cannot go beyond the 25 per cent limit set by the General Condition.
- 5.16 BT has made a commitment that any new PCBs installed will be wheelchair accessible. In reality, all BT’s PCBs, with the exclusion of red boxes, are wheelchair accessible.
- 5.17 We have concluded that the other proposed measures on additional amplification and inductive coupling, and change the wording of the condition to make this latter requirement more explicit, should go ahead.
- 5.18 Our interim conclusion is that the other proposed measures on additional amplification and inductive coupling should be implemented and we intend to consult on these changes in the spring consultation.
- 5.19 The June statement proposed a PCB accessibility event with a view to promoting an inclusive design approach to the provision of payphone facilities. Although the dynamics of the market suggest that no new kiosks are being designed we still believe there is value in holding such an event to focus on those aspects of payphone and multimedia kiosk design that can be customised or modified. We shall be announcing a date for the event shortly.

- 5.20 The guidance in annex 4 has been amended to reflect the respondent's concerns. Although managed payphones are not subject to the requirements of GC6 many of them are in covered locations and are less likely to be housed in kiosks that obstruct wheelchair accessibility.

### **The obligation to provide bills and contracts in alternative formats**

- 5.21 Ofcom had proposed to extend the existing requirement to provide bills and contracts in alternative formats to all customers whose disability prevents their reading bills or contracts in conventional printed formats. This is a fair and proportionate proposal which has been broadly welcomed and Ofcom intends to propose this solution as part of the spring consultation.

### **Short code access to a directory enquiry facility**

- 5.22 Ofcom consulted in June on an amendment to GC 15 that omitted the requirement to offer short code access to a directory enquiry service. This proposal reflected the withdrawal of the '192' code and its replacement by a range of 118 xxx numbers.
- 5.23 There were a number of responses that recognised that a short code was no longer practicable but voiced concerns about the impact of liberalised directory services on disabled customers.

### **Ofcom's conclusions**

- 5.24 Ofcom's interim conclusion is that the requirement to offer short code access to a directory enquiry service should be deleted from GC15 and intends to propose this amendment to the condition as part of the spring consultation

### **Mystery shopping exercise**

- 5.25 Ofcom has repeated the mystery shopping exercise it commissioned in 2004 into the availability of the services required to be provided under GC 15, but this time with a larger sample. We shall be publicising the outcome once the exercise is concluded.

## Section 6

## Provision of connection upon reasonable request and functional internet access

- BT and Kingston are each required to provide access to basic telephone services with a narrowband connection capable of 'functional internet access' upon reasonable request and at uniform prices, irrespective of location.
- Where installation of a new line costs £3,400 or less, BT makes a standard charge (£99.99 for residential, £116.33 for business). Where installation costs over £3400, BT requires the user to pay the excess costs (plus its standard charge).
- Ofcom believes that BT's general approach of a 'threshold' is sensible in the interests of efficiency and consistency. We are therefore issuing a formal consent to BT to allow it to charge non-uniform prices above £3400.
- Ofcom is publishing guidance on BT's obligation to help BT and consumers understand the matters Ofcom would take into consideration should it receive a complaint as to whether BT has met its obligation to provide access on reasonable requests. This guidance will also provide greater flexibility for BT to handle requests from vulnerable customers.
- To provide robust data for future reviews, Ofcom is requesting that BT keep records of all cases where provision of a narrowband connection costs more than BT's standard connection charge (for a period of 12 months).
- The existing guidelines on functional internet access (FIA), including the benchmark minimum of 28.8 kbps, appear to be working effectively. Ofcom is retaining the guidelines; but
- Ofcom is making minor amendments to the FIA Guidelines to emphasise that FIA involves the provision of optimal speeds and to clarify the information to be provided by BT.

6.1 Universal Service Condition 1 says that BT and Kingston (as designated universal service providers) are each required to provide access to basic telephone services upon reasonable request and at uniform prices and at data rates that are sufficient to permit functional internet access. Ofcom may consent to non-uniform prices but, in accordance with the Universal Service Order, only where there is clear justification for doing so.

6.2 In its consultation document in January 2005, Ofcom sought views on whether it should consent to non-uniform prices above a certain threshold and on what factors

should be taken into account in deciding whether or not BT has complied with its obligation. In addition, Ofcom consulted on the scope of BT's obligation to provide connections capable of FIA and whether the existing guidelines on this need updating to clarify the information required from BT to monitor its compliance.

6.3 The June 2005 statement and further consultation set out Ofcom's policy conclusions on the following key issues:

- The threshold policy
- Level of the threshold and scope of the guidance to operate alongside the threshold
- The functional internet access guidelines

6.4 In addition, Ofcom published clarification of the rules surrounding BT's obligation as it relates to new property developments.

### The threshold policy

#### Background

6.5 BT and Kingston are each required to provide access to basic telephone services upon reasonable request and at uniform prices, irrespective of location. Kingston complies with its obligation by making the same standard charge to all new customers whereas BT charges non-uniform prices where the cost of connection exceeds a threshold of £3,400 ('the threshold policy').

6.6 Where installation of a new line costs £3,400 or less, BT makes a standard charge (£99.99 for residential, £116.33 for business). Where installation costs over £3,400, BT requires the user to pay the excess costs plus its standard charge. Although connections costing more than £3,400 mostly occur in rural areas, the provision of a connection upon reasonable request is not exclusively a rural issue.

#### Ofcom's approach to regulation of reasonable request

##### Consent to non-uniform charging

6.7 Under BT's threshold policy, all customers pay the standard charge throughout the UK if the costs are below £3,400. Above £3,400 prices are not uniform and customers pay according to the particular circumstances. Whilst BT is applying its threshold policy uniformly across the UK (excluding Hull), the price paid by end users is therefore variable as it depends on the cost to BT of providing the connection and whether this falls above or below the threshold.

6.8 In Ofcom's January 2005 consultation document, Ofcom stated that it could be argued that BT was therefore not complying with its obligation to provide connections at a uniform price. Ofcom therefore consulted on two options for addressing this situation. These options were:

- Option 1: BT could be required to meet all reasonable requests for connection at a standard price. Under this option, BT would have to abandon the threshold and would be required to meet all reasonable requests for connection at a standard price irrespective of costs.

- Option 2: BT could apply a threshold and Ofcom could consent to non-uniform charges. This option would maintain the current approach where BT charges a non-uniform tariff where the costs of connection exceed a threshold, whatever that might be.
- 6.9 Ofcom favoured option 2. Ofcom's view was that whilst option 1 benefited consumers who would otherwise have to pay excess charges, if removal of the threshold meant that the number of requests for connections was high, BT could be incentivised to refuse requests on the basis that they were not reasonable. Ofcom's view was that option 1 could lead to an increased financial burden on BT or lead to customers who would otherwise be prepared to pay the excess not having connection to the network at all. In light of these potential risks, Ofcom favoured option 2.
- 6.10 The majority of respondents to the January 2005 consultation supported Ofcom's Option 2 proposal on the basis that the threshold was the best way to achieve a sensible balance between the needs of the majority and the needs of the consumers in remote areas.
- 6.11 Ofcom agreed with the majority of the respondents to the January 2005 consultation and stated in the June 2005 document that it believed that the use of threshold was simple for consumers to understand and straightforward for BT to implement. As also noted by the majority of respondents to the January 2005 consultation, without a threshold in place BT might be encouraged to refuse requests for more costly connections outright, on the basis they were not reasonable. Ofcom stated that it believed that there was clear justification for non-uniform prices on the basis that retaining the threshold is and would continue to be beneficial to consumers.
- 6.12 Therefore, in the June 2005 document Ofcom published draft consent to non-uniform charging, enabling BT to apply a threshold policy. Ofcom invited views on the draft consent to non-uniform charging.

#### BT data on requests for connections

- 6.13 In response to the January 2005 consultation, the Ofcom Consumer Panel recommended that BT should be required to record data on all requests for connections, including those declined for cost reasons and details of how much it cost (or would have cost) to provide those connections, for a period of one year.
- 6.14 Ofcom agreed that this information would be useful to keep the application of the threshold under review. In the June 2005 document Ofcom therefore proposed to ask BT to collect such data on all requests for connections over a twelve month period.

### Responses to the June 2005 consultation

#### Consent to non-uniform charging

- 6.15 A large majority of respondents to the consultation supported Ofcom's consent to non-uniform charging above a threshold of £3,400. They saw the application of a threshold as simple and transparent. The threshold ensures that customers with costly requirements are not inappropriately subsidised by the vast majority of customers. They also expressed concern that the removal of the threshold could lead to customers who would be prepared to pay the excess being refused a connection by BT.

- 6.16 However, two respondents suggested Ofcom needed to undertake further analysis to understand the level of suppressed demand that would be unleashed if the threshold was removed (i.e. whether there would be a significant increase in the number of requests for connections which would cost over £3400) and the cost of meeting that demand, before it could conclude whether the application of a threshold was the right approach. It argued that without this analysis the threshold would be arbitrary.

### BT data on requests for connections

- 6.17 Ofcom's decision to require BT to provide data on which the concept and level of the threshold can be tested was well supported by respondents, including the Ofcom Consumer Panel. The Panel noted that this data could be used to review and re-examine the appropriate level of the threshold.

## Ofcom's conclusions

### Consent to non-uniform charging

- 6.18 Ofcom is confirming its approach set out in the June 2005 document by consenting to BT charging non-uniform prices for connections upon reasonable request. This consent is published in Annex 5.
- 6.19 We believe there is clear justification for non-uniform prices on the basis that retaining the threshold is and will continue to be beneficial to consumers. Ofcom's view is that this is the best way to manage the interests of the majority of consumers as well as the minority who live in remote or hard to reach areas. Retaining the threshold will provide better clarity and more opportunity for BT to be rigorous and consistent in complying with its obligation.

### BT data on requests for connections

- 6.20 We recognise that the threshold should be kept under review to ensure its application remains appropriate and valid. For example, if the number of people facing excess charges increased significantly, Ofcom may choose to review the application of a threshold because it was no longer serving the interests of the majority of consumers. We are therefore requesting BT to collect data on all requests for connections, including those declined for cost reasons and details of these costs over a period of a year. Ofcom will use this information to review, the threshold policy going forward.

## Level of the threshold

### Background

- 6.21 The affordability of the telephone service is a key concept of universal service, enshrined in the USD and the Order. Ofcom must however balance achieving affordability for consumers with proportionate measures, for example in accordance with its duties under section 3 of the Act. This means it must consider the possible cost increase for BT should the threshold be lowered from £3400.
- 6.22 The existing threshold of £3,400 was based on a previous assessment by BT of how many man-hours would be required to complete the work. If it was less than 100 man-hours, a standard charge applied. If over 100 man-hours, the customer was required to pay a charge based on the additional work involved. This was known as the '100 man hours' rule.

6.23 In 2001, BT changed its approach as contractors it employed no longer charged on the basis of man-hours. BT instead fixed a figure of £3,400, based on a notional rate of £34 per hour. This was referred to as the '£3,400 rule'.

### Ofcom's approach to the level of the threshold

#### Level

6.24 In January 2005, Ofcom put forward two options for the level of the threshold if Ofcom were to consent to non-uniform charging:

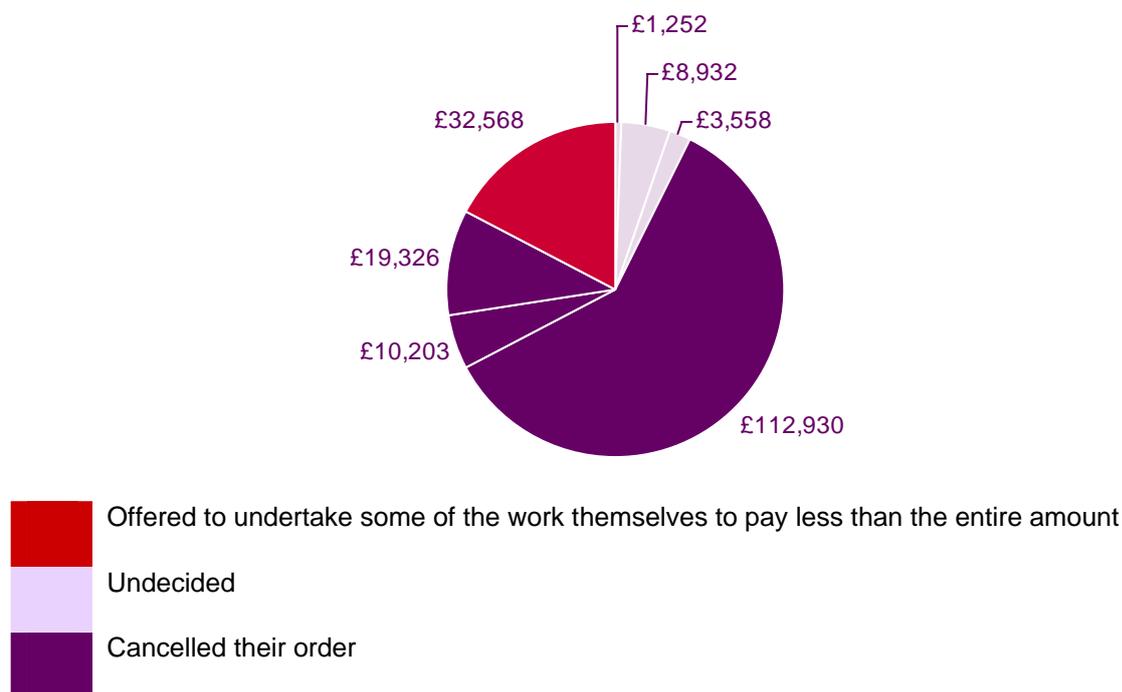
- Option 1: Consent to non-uniform charges where costs exceed £3,400. Under this option Ofcom would consent to BT continuing to apply its £3400 rule and charge non-uniform prices for connections.
- Option 2: Consent, guidance and revision of threshold. This option would mean that the threshold was retained at a threshold according to data we have collected on excess charges (see 7.27 below) and responses to the consultation, Ofcom would consent to non-uniform prices and would issue guidance setting out the issues Ofcom would take into consideration in deciding whether BT had complied with its universal service obligation.

6.25 Ofcom initially favoured Option 2 on the basis that guidance, together with a revised threshold would be the most effective way of ensuring BT met all reasonable requests where the cost of a connection exceeded the threshold and where BT required the customer to pay the excess. Establishing a threshold would provide consumers with certainty. The use of guidance would enable individual circumstances to be taken into account whilst controlling the possible cost increase for BT.

6.26 Ofcom was of the view that the lack of data on excess charges made it difficult to estimate the effect that revising the threshold would have on the number of requests and on costs to BT. Ofcom therefore asked BT to keep records of all requests over a 3 month period (13 August to 12 November 2004) including those that exceeded £3,400 and where the customer decide not to proceed.

6.27 The data from the three month review showed only a small number of customers were quoted excess charges but that the extent of the charges quoted varied significantly. The data showed that eight customers were quoted excess charges of between £1,252 and £112,930. None of the customers agreed to pay the entire amount – three offered to undertake some of the work themselves to pay less than the estimated cost and four cancelled their order, the eighth customer was yet to respond. During the same period, BT had provided a total of 473,924 new retail connections, including 291,219 residential lines and 182,705 business lines (USO and non-USO lines).

Total cost to each customer of all excess construction charges (assuming £3,400 allowance, exc. VAT)



- 6.28 In response to the January 2005 consultation, BT argued that a threshold of £2,000 was more appropriate. This was because BT said it took over 15 years for the revenue from connection to repay the £3400. There was no requirement for a customer who benefits from the standard charge to remain with BT for any period of time (customers can keep their line but make calls with another providers via, for example, carrier pre-selection) so BT might therefore receive no call revenue to offset the costs of provision.
- 6.29 However the majority of respondents did not identify a pressing need for a radical revision of the threshold level. There was some concern about how the right level could be identified given the lack of information on likely demand for lines if the level of the threshold was raised.
- 6.30 Based on BT's analysis, Ofcom estimated that nearly 700 additional consumers would be subject to excess construction charges every year if the threshold was reduced to £2,000. At the same time, we concluded that any notional increase in the level of threshold was likely to offer few consumer benefits – the level of excess charges faced by the eight BT customers was such that only a significant increase in the threshold level would have any real impact. The range of the excess charges quoted (£1,252 to £112,930) suggested that to ensure more of these customers were to pay a standard charge, the threshold would need to be increased significantly.
- 6.31 Ofcom also considered a further option of increasing the threshold annually in line with normal construction cost inflation rates. Ofcom stated however that the administrative costs of implementing such a scheme and the potential for inconsistency and consumer confusion (for example where applications would be made during or at the end of the financial year) would outweigh the benefits.
- 6.32 On the basis of these findings, in the June 2005 document Ofcom stated that the existing threshold of £3,400 was clearly justifiable by striking the right balance

between protecting customers and ensuring that BT does not face significantly increased costs.

## Guidance

- 6.33 In addition to the draft consent, we published draft guidance on BT's obligation to provide objective criteria to test for the reasonableness of a request, thereby helping BT and consumers understand the matters Ofcom would take into consideration should it receive a complaint as to whether BT has met its obligation.
- 6.34 Ofcom agreed with respondents to the January 2005 consultation that it is much harder to justify a threshold when a consumer requesting a connection is an older or disabled user, and that greater flexibility should apply in these cases.
- 6.35 Ofcom proposed that whether or not a consumer has access to a mobile phone service should not be a factor on which it would solely base a consideration of whether a request was reasonable. Ofcom's view was that to do so would undermine BT's universal service obligation to provide a defined minimum set of services to all end users at an affordable price.
- 6.36 The scope of the proposed guidelines therefore included the protection of vulnerable groups such as older and disabled users and those eligible for special tariff schemes targeted at low income customers. The guidance also made clear that BT should ensure that the most efficient means of connection are considered when calculating costs of connection and this may include customers carrying out part of the works themselves if they wish to do so.

## New property developments

- 6.37 In the course of the January 2005 consultation, it became evident there was some confusion regarding how BT's obligation to provide requests for connections at a fixed location upon reasonable request applies in the context of new property developments. Respondents were unsure whether BT had a right to roll out its copper network on the basis of its USO.
- 6.38 To improve understanding of BT's obligation in this situation, we therefore published clarification of the rules surrounding BT's obligation to provide connections upon reasonable request, to new property developers. In summary Ofcom proposed that:
- BT could not refuse a request as unreasonable solely on the basis that the customer lives or works within an area already provided with fibre;
  - Customer eligible for special tariff schemes who live within a fibre-provided area can reasonably request such services from BT;
  - Ofcom proposed to encourage developers to consider using providers other than BT but advised that they must be aware that other providers (eg BT) may seek to roll out their networks alongside to compete using powers under the Communications Code;
  - Given BT's universal service obligation to provide, it was likely that BT might be one of these providers but BT does not have a right to require developers to build out copper as part of new housing projects in order to fulfil its own universal service requirements; and

- BT could deliver its universal service obligation across alternative infrastructure subject to commercial agreement.

### Responses to the June 2005 consultation

#### Level of the threshold

- 6.39 The majority of respondents to the June 2005 consultation supported Ofcom's initial conclusion that £3,400 was an appropriate level for the threshold. They provided no evidence for why the threshold should be revised.
- 6.40 However, a number of these respondents also stated that further analysis should be undertaken to validate the setting of the threshold level going forward. They argued that understanding the extent of unmet demand for connections that exists as a result of excess charges is imperative to make a qualified decision as to what the threshold level should be or whether there should be a threshold at all.

#### Guidance

- 6.41 Respondents widely agreed with the scope of Ofcom's proposed guidelines which set out the matters Ofcom would take into consideration should it receive a complaint as to whether BT had met its obligation to provide a connection upon reasonable request.
- 6.42 However, individual stakeholders raised the following specific points about the proposed guidelines:
- BT argued that the availability of mobile should be given more prominence in the test of reasonableness;
  - The Ofcom Consumer Panel argued that vulnerable consumers should not be charged the standard rate for a connection; and
  - One respondent said that decisions about vulnerable consumers should not be left to the providers' discretion. It argued that Ofcom should require providers to offer discounts or special connection tariffs.

#### New property developments

- 6.43 BT welcomed Ofcom's clarification regarding new developments. In addition it requested further clarification about any legal costs incurred using Code Powers and whether these could contribute to the £3,400 threshold.

### Ofcom's conclusions

#### Level of the threshold

- 6.44 In consenting to non-uniform charging for connections on reasonable request Ofcom concludes that the appropriate threshold is £3,400.
- 6.45 Ofcom is of the view that reducing the threshold to £2,000 would result in many more consumers being potentially subject to excess charges. Based on BT's data supplied to Ofcom for the period 13 August to 12 November 2004, Ofcom previously estimated that nearly 700 additional consumers would be subject to excess

construction charges every year if the threshold was reduced to £2,000 (see paragraph 6.30 above).

- 6.46 At the same time, Ofcom's view remains that any notional increase is likely to offer relatively few consumer benefits. The level of excess charges faced by the eight BT customers identified in BT's analysis was such that only a significant increase in the threshold level would have any real impact. The range of the excess charges quoted (£1,252 to £112,930) suggested that to ensure more of these customers were to pay a standard charge the threshold would need to be increased significantly (see also paragraph 6.30 above).
- 6.47 We believe that £3,400 is therefore clearly justifiable by striking the right balance between protecting the interests of consumers and ensuring BT does not face significantly increased costs (that in turn could be passed on to consumers). Ofcom's consent for BT to charge non-uniform prices where costs exceed a threshold of £3,400 is published today (Annex 5).
- 6.48 However Ofcom acknowledges stakeholder support for the threshold level to be reviewed. Data on unmet demand for connections that results from excess charges will enable Ofcom to ensure the threshold level continues to manage the interests of the majority of consumers as well as the minority who live in remote or hard to reach areas. Ofcom will use the data it is requesting from BT (see paragraph 6.20) to review as appropriate, the threshold policy going forward.

## Guidance

- 6.49 Ofcom is confirming its guidance on BT's obligation to provide a connection to the fixed network on reasonable request. This guidance is published in Annex 6.
- 6.50 In response to individual issues raised about the content and scope of the guidelines, Ofcom concludes the following:
- Access to mobile phone services is not a factor on which Ofcom would decide whether a request is reasonable. We believe that to do so would undermine BT's universal service obligation to provide a defined minimum set of services to all end users at an affordable price.
  - We believe that the standard rate for a connection should continue to apply to all consumers including those eligible for the special tariff scheme. As explained in Section 3, affordability concerns are being addressed by ensuring that the new targeted special tariff scheme has as standard payment of the connection charge by instalments over five quarterly bills.
  - In response to the view that Ofcom should require providers to offer discounts or special connection tariffs to defined groups of consumers, we believe that the guidelines offer a more appropriate way for BT to assess when special tariffs should be offered, by taking into account the merits of individual cases. Moreover, BT is not the final arbitrator of these schemes. Ofcom has the power to investigate disputes. We believe this is the right level of intervention and provides sufficient protection for low income consumers.

## New property developments

- 6.51 It is increasingly common for property developers to wish to build fibre access to new premises from the start. A number of such developers have approached Ofcom for

guidance on a range of regulatory questions. Therefore, in parallel to this document Ofcom published draft guidance – Fibre Access for new Build Premises and Community Broadband Networks - on 2 March 2006. This reproduces the original clarification on BT's USO as well as providing guidance on other important areas including:

- Provision of voice services over fibre access networks
- Deployment of parallel competing access network
- Ex ante regulation and competition policy
- Provision of network access

6.52 If you have any comments or questions about these guidelines, please contact Clive Carter - [clive.carter@ofcom.org.uk](mailto:clive.carter@ofcom.org.uk)

6.53 Finally, in response to BT's request for clarification of whether legal costs – such as those incurred in gaining access to privately owned land – contribute to the £3,400 threshold level, Ofcom's view is that such costs should not contribute to the level. Allowing such costs to contribute to the threshold is likely to result in more requests for connections exceeding the threshold and we do not believe this is in the interests of consumers.

## Functional Internet Access

### Background

6.54 As Universal Service providers, BT and Kingston are required to provide any end-user upon reasonable request with basic telephony services at data rates that are sufficient to permit functional internet access. Before July 2003, BT and Kingston were only required to provide facsimile or voice band data up to 2400 bit/s (2.4 kbit/s).

6.55 The term 'Functional internet access' and the data rates that are sufficient to permit such access, have not been defined at a European level. The Universal Service Order requires the provision of functional internet access but as with the Universal Service Directive does not define FIA. 'Guidelines on functional internet access' ('the Guidelines') were consulted upon and published in 2003. The Guidelines were intended to ensure a balance between consumer expectations and the resulting burden upon BT and Kingston. The Guidelines set the FIA minimum speed at 28.8 kbit/s.

### Ofcom's approach to FIA

6.56 In January 2005, Ofcom put forward four options for the Guidelines on FIA:

- Option 1: No change
- Option 2: Amend the Guidelines to emphasise that FIA involves provision of optimal speeds / 28.8 kbit/s is a benchmark minimum speed and to clarify what information BT needs to provide to help Ofcom monitor compliance
- Option 3: Increase the benchmark minimum to 33.6 kbits

- Option 4: Remove the guidelines
- 6.57 Ofcom proposed that its preferred option was option 2. This was because it would benefit users without creating a disproportionate burden on BT. Ofcom acknowledged that although FIA was a new addition to the USO regime and the Guidelines had only been in place for a relatively short time, BT had undertaken positive measures to comply with the Guidelines.
- 6.58 The majority of respondents to the January consultation supported retention of the FIA minimum speed at 28.8 kbit/s and amending the existing Guidelines to emphasise that FIA involves the provision of optimal speeds and to clarify the information to be provided by BT. However some argued that the benchmark speed should be increased to 33.6 kbit/s.
- 6.59 In the June statement, Ofcom considered the arguments made in favour of increasing the FIA minimum speed but concluded that on balance, placing greater requirements on BT was not justified. Evidence suggested that the vast majority of customers already receive data rates in excess of 33.6 kbit/s. In addition, a very small (and decreasing) proportion of lines have DACS fitted.
- 6.60 DACS - Digital Access Carrier System is a method of delivering two independent phone services over a single phone line, used by providers where demand exhausts the number of lines. Where a line is used for voice calls only, DACS is a perfectly acceptable technology. However if the user subsequently wants internet access, typical speeds are around 24 kbit/s – falling short of the benchmark speed of 28.8 kbit/s. In the January 2005 consultation, Ofcom noted that BT had changed its position on DACS, removing or reassigning DACS devices from 259 customers over a 10 month period. Because DACS will not support DSL services, we indicated that BT therefore has an incentive to remove DACS to roll out broadband services.
- 6.61 The approach set out by Ofcom in the June statement also seemed to provide the right balance between the interests of consumers and the impact upon the providers. Increasing the minimum benchmark speed could create a disproportionate financial burden on BT. Ofcom's view was that for limited gain in line speed, a greater burden of this kind could have the negative effect of diverting BT's attention and investment from important areas such as broadband and next generation networks.
- 6.62 We stated that Ofcom should retain the existing Guidelines on FIA, including the benchmark minimum of 28.8 kbit/s. To improve clarity and understanding of the Guidelines, Ofcom also consulted on the following amendments:
- to emphasise that providers must show they are making every reasonable effort to ensure lines can achieve optimal performance and that 28.8 kbit/s is a benchmark minimum speed; and
  - to clarify the information to be provided by BT.
- 6.63 With the amendments proposed, we specified the information we would expect BT to provide voluntarily on a regular basis to help monitor BT's compliance:
- average final connect speeds of customers
  - the number of complaints from end-users on connection speeds for internet access and BT's assessment of the underlying causes for each case

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- BT's use of pair-gain systems within the network, the proportion of lines affected and any reduction or increase in their use
- the number of substantiated complaints regarding D-side and E-side cables (as described in the Guidelines)

6.64 Finally, Ofcom agreed to seek to offer better signposting to the Guidelines via its website, through the Ofcom Contact Centre and other appropriate channels.

## Responses to the consultation

6.65 The vast majority of respondents agreed with Ofcom's view that there was no need for substantive change to the guidelines on FIA. They agreed that the proposed amendments – to emphasise that 28.8 kbit/s is a benchmark speed and to clarify the information to be provided by BT – were appropriate.

6.66 A small minority of stakeholders continued to argue that the minimum FIA speed should be increased and that Ofcom should make a commitment to review the situation.

6.67 BT agreed to provide Ofcom with regular reports on FIA. However it asked Ofcom to reduce the requirement for BT to provide information every six months, rather than three as initially proposed. BT also expressed concern that reporting the number of end user complaints would be misleading.

## Ofcom's conclusions

6.68 Ofcom will retain the existing Guidelines including the benchmark minimum of 28.8 k/bits. These are published in Annex 7. We believe this approach strikes the right balance between the interests of consumers and the impact on providers. Increasing the benchmark minimum speed could create a disproportionate financial burden on BT. It remains our view that for limited gain in line speed, a greater burden of this kind could have the negative effect of diverting BT's attention and investment from important areas such as broadband and next generation networks.

6.69 We recognise that some stakeholders would like Ofcom to review the minimum FIA speed in the near future. Speed of connection will form an important part of the next review of Universal Service.

6.70 Ofcom will seek to increase awareness of the guidelines amongst consumers to help increase knowledge of their rights by publishing them on the Consumer Portal on Ofcom's web site.

6.71 As set out above, BT has voluntarily agreed to provide Ofcom with regular reports on FIA. Ofcom has agreed that these reports should be provided every six months. We believe that this will give Ofcom the right level of detail and regularity with which to monitor BT's compliance with the guidelines.

6.72 However BT has said that reporting the number of complaints from end-users on connection speeds and BT's assessment of the underlying cause for each case would place an onerous burden on BT to compile.

6.73 Furthermore, BT is concerned that reporting the number of complaints will paint a misleading picture and one that is not relevant to making an assessment of the effectiveness of the Guidelines. BT argues that consumers' internet experience is

dictated by several factors – not just the connection. For example, because consumers may be used to fast connections at work, they could complain to BT when in fact the performance of their narrowband connection is good.

- 6.74 Ofcom strongly believes that the right information needs to be made available by BT about consumer complaints so we can ensure compliance with the Guidelines and their effectiveness on the customer's experience. However we accept that not all consumer complaints about internet performance mean there is in fact a problem with their connection. Collecting data in this simple format could therefore be misleading. We will work with BT to establish the correct level of information on consumer queries and complaints about consumers' internet experience ahead of the next review of USO.

## Section 7

# Costs and benefits of universal service

- Universal Service is currently funded by BT and Kingston.
- Under the Act, Ofcom may put in place alternative methods of provision or funding if there is a net cost – that is, the costs once the benefits have been taken into account – that imposes an unfair burden on the provider(s) with the obligations.
- In order to consider whether a full scale review under Section 70 of the Act was required Ofcom updated estimates of costs and benefits in the consultation by considering how the net cost to BT of providing USO might have changed in recent years.
- In the January consultation Ofcom set out indicative estimates for the 2003/04 costs to BT at £52-74m and at £59-64m for the 2003/04 benefits and its view that these were unlikely to represent an undue financial burden for BT that would justify carrying out a full scale review.
- Most respondents to the consultation considered Ofcom's estimates to be reasonable whereas BT considered that the costs of uneconomic PCBs were understated, and the benefits overstated, and challenged the evidence for the benefits.
- All respondents supported a more detailed assessment of the costs and benefits of universal services but there was no consensus on when it should take place and what it should cover.
- Ofcom concluded in the June statement that the indicative estimates were reasonable and suggested that there is currently no unfair burden on BT which would justify a full review.
- Ofcom will begin a detailed cost and benefit study in 2007. This will inform the next review of USO and a decision on whether a full review under section 70 is required.
- As part of this future work Ofcom will seek to address issues raised by the respondents, in particular, those concerning PCBs, brand enhancement benefit, and costs of the relay service

## The issues discussed in the January consultation

- 7.1 Under Section 70 of the Act, Ofcom may from time to time review the extent, if any, of the financial burden for a particular USP in complying with USO. This burden is assessed at the present time by considering the cost of compliance less the market benefits accruing from designation and application to the USP.
- 7.2 In the January consultation Ofcom considered whether a review under Section 70 was required by assessing the extent to which the costs and benefits to BT of universal service might have changed since the last estimates of costs and benefits to BT in 2001.
- 7.3 Ofcom approached this by first evaluating whether customers and services were 'uneconomic' for the USP to serve and second, by evaluating the benefits which

required an estimate of how the financial performance would be affected if the provider lost its USO status. Finally, the benefits were subtracted from costs to result in a net cost figure.

- 7.4 In the January consultation Ofcom explained that it believed that, since the last review, the costs of uneconomic areas are likely to have remained stable while the costs of uneconomic customers are likely to have significantly decreased because the number of customers on special tariff schemes has diminished by about 50%. Ofcom estimated that the costs of USO payphones would have increased because of the sharp decrease in the number of calls made from PCBs.
- 7.5 In terms of benefits Ofcom focused on ubiquity, life-cycle effect, brand enhancement, corporate reputation and advertising on PCBs. Ofcom considered the benefits to have remained largely unchanged since the last estimates with the main benefit coming from brand enhancement.
- 7.6 Overall Ofcom's indicative estimates for 2003/4 range between £52-74M for the universal costs and between £59-64M for the benefits. These are summarised below:

Costs	Indicative estimate of costs (£M) for 2003/04	Benefits	Indicative estimate of benefits (£M) for 2003/04
Uneconomic areas	5 – 10	Life cycle	0-1
Uneconomic customers	24 – 31	Ubiquity	Insignificant
Uneconomic payphones	23 – 33	Brand enhancement and corporate reputation	50-52
		Advertising on PCBs	9-11
Total	52 – 74	Total	59-64

- 7.7 Given the available evidence on costs and benefits, Ofcom's view was that it was unlikely that there was currently an undue financial burden on BT that would justify conducting a full scale review under Section 70. However, Ofcom suggested that a more thorough costing exercise might be needed once the new arrangements are in place following this review.
- 7.8 Ofcom invited views on the indicative estimates and on whether an updated costs benefit analysis should be carried following the implementation of the current review.
- 7.9 Most respondents considered Ofcom's updated analysis and conclusions to be reasonable, given that there had been no significant change in the economics of USO.
- 7.10 BT was concerned that the costing of uneconomic areas and uneconomic customers was based on an outdated model. In addition, BT noted with disappointment that Ofcom's analysis of PCBs costs had not been carried out in detail and rejected the suggestion that PCBs costs might be over-estimated. On benefits BT argued that there was no evidence for the assumption that brand enhancement was worth 20 per cent of BT's marketing and advertising expenditure and pointed to BT research which it claimed showed that there is not a brand enhancement effect from USO. In

relation to benefit arising from PCBs, BT rejected Ofcom's comparison with advertising on bus shelters, considered that the estimated benefits should be lower and added that vandalised PCBs damage reputation. Kingston expressed disappointment that Ofcom did not estimate its USO costs and benefits.

- 7.11 Two aspects of the costs and benefits analysis attracted specific attention from other stakeholders: text relay and special tariff schemes. Some respondents including the Consumer Panel asked for greater details on the costs to BT and other providers of providing the text relay service. On special tariff schemes, some stakeholders argued that the falling costs represented BT's failure to promote and develop effective schemes targeted to these customers while others argued that any future analysis should assess the contribution of mobile operators in meeting the needs of vulnerable through the provision of pre-pay services.
- 7.12 Most respondents on the USO costing issue supported a more detailed assessment of the costs and benefits of universal services but there was no consensus on when it should take place and what it should cover. BT indicated that it was time to revisit the analysis and suggested in particular that the costs of PCBs should be re-investigated in the light of recent developments. Most other providers considered that a detailed assessment should only be undertaken when there is a significant change either in the scope of USO or in the market such as that arising from Next Generation Networks or increased competition and that in a study:
- all benefits should be considered;
  - the focus should be on vulnerable consumers and on those obligations that could not be provided commercially; and
  - the assessment should cost the most efficient delivery of USO.

### June statement

- 7.13 In the June statement Ofcom concluded that the approach to assessing the cost of USO set out in the January consultation remained appropriate and that the indicative estimates were reasonable because the overall costs and benefits and the technology used to provide USO had not changed significantly since the original analysis in the mid-1990s.
- 7.14 However Ofcom acknowledged that the original economic analysis is now quite old and concluded that it is appropriate to carry out a reassessment of costs and benefits taking account of the changes from the current review when it is implemented. Ofcom therefore indicated that it will commission a consultancy study into the costs and benefits of USO.
- 7.15 Ofcom explained that the analysis will take account of comments made by stakeholders in responses including:
- estimating the costs of unprofitable PCBs on the basis of more detailed and disaggregated information to be submitted by BT taking into account BT's comment regarding the number of unprofitable PCBs to be included in the costing exercise;
  - revisiting the issue of benefits derived from universal service obligation during its next detailed costs and benefits analysis;

- considering the appropriate costs and benefits relating to the provision of the text relay service;
- examining the impact of the new targeted social tariff scheme and the changes in the regime for PCB removal; and
- assessing separately the costs and benefits to Kingston.

### Responses to the June Statement

- 7.16 Although the June statement did not invite views on these conclusions, some responses from consumer stakeholders commented that they favoured an early move to a USO fund as a means to ensure independent delivery of universal services and to provide a sound financial basis going forward.

### Conclusions

- 7.17 Ofcom continues to believe that the approach to costing USO set out in the January consultation and June statement remains appropriate and that the indicative estimates are reasonable.
- 7.18 Ofcom intends to proceed to commission a consultancy study into the costs and benefits of USO. In view of the delay to this Statement and to allow Ofcom to consider the effects of the introduction of the new special tariff scheme which will be introduced in 2007 and the impact of the new rules around PCBs, Ofcom intends to begin that study in 2007. This study will inform Ofcom's next review of USO which is expected in 2009/10 and any decision on whether to carry out a full cost benefit analysis under Section 70 of the Act.

## Annex 1

# New special tariff scheme

A1.1 Set out below are details of the targeted special tariff schemes that BT intends to launch during 2007.

Feature	
<b>Connection charge</b>	Standard residential connection charge (currently £99.99) with spread connection (to be paid over five billing periods) as the default option.
<b>Rental</b>	£14.50 a quarter
<b>Inclusive Call Allowance (ICA)</b>	£2 a quarter
<b>Rental and related discounts</b>	Discount of £3 a quarter for customers who pay by direct debit (DD) or by monthly payment plan (MPP)  Additional £2 ICA for customers not paying by DD or MPP who pay their bills within eight calendar days
<b>Call costs</b>	10p per minute for inland geographic calls  BT Together 1 rates for other calls.
<b>Payment method</b>	Pre-pay and post-pay options available. Post-pay will be the default option.  In Contact type facilities will be available i.e. outgoing calls barred with the use of a BT payment card for outgoing calls.
<b>Eligibility</b>	Customers in receipt of Income-based Job Seekers Allowance or Income Support. Customers in receipt of Pension Credit.
<b>Exclusions</b>	Customers who use Indirect Access or Carrier Pre-Selection or a WLR provider.  Customers with Broadband.  Customers with more than one line.  Customers with lines used exclusively for burglar alarms (not including "lifeline" alarm systems)  Customers with an ISDN or business line  Customers with a payphone  Mobile users with monthly contract or high use mobile prepay users (over £10 a month). The mobile exclusion does not apply to

<b>Feature</b>	
	chronically sick or disabled customers
<b>Eligibility assessment</b>	<p>Customers will self-declare.</p> <p>BT is currently working with officials in the Department for Work and Pensions to explore the scope for developing an arrangement to allow verification that a customer is on the relevant benefits to be eligible for the new Social Scheme</p>
<b>Price constraints</b>	Prices for inland geographic calls particular to the scheme and rental on the scheme will not rise above the retail price index.
<b>Relationship with Light User Scheme and In Contact</b>	Once the new scheme is launched, the Light User Scheme and In Contact will be closed to new members. The new scheme will operate alongside the Light User Scheme and In Contact until 600 000 new customers are using the new scheme. BT will use a tailored communications approach to existing Light User and In Contact customers who are identified as within the appropriate low income bracket to encourage migration to the new scheme.

## Annex 2

# PCBs: Notification of changes to USO designation

## Explanatory Memorandum

- A2.1 Ofcom consulted on a change to the definition of “Site” under Paragraph 1 of Part 1 of the Schedule to the Notification designating BT and Kingston as USO providers to a walking distance of 400 metres from a PCB.
- A2.2 As explained in paragraphs 4.16 to 4.23, the change in the definition of “Site” from 100 to 400 metres reflects changing market conditions and responses received to the consultation.
- A2.3 Ofcom has sent a copy of the notification set out in this Annex to the Secretary of State in accordance with section 50(1) of the Act. Ofcom also considers it appropriate to send a copy of the notification to the European Commission under section 50(6) of the Act, given that the Commission is currently consulting on its review of the scope of universal service as further described at paragraph 1.20 of the main statement.

## Section 3 and section 4 analysis

- A2.4 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4. The change, together with the additional changes set out in paragraphs 4.24 to 4.51, further the interests of citizens in relation to communication matters and of consumers in relevant markets because, as long as there remains a PCB within a Site, the PCB cannot be removed without BT or Kingston complying with their obligations to consult with relevant public bodies. The change promotes the interests of all persons who are citizens of the European Union by ensuring that the reasonable needs of end users are met in terms of geographical coverage, the number of PCBs and the quality of call box services.

## Section 47 analysis

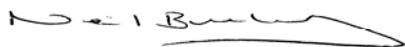
- A2.5 Under section 47 of the Act, Ofcom must not modify a universal service condition unless it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates, not such as to discriminate unduly against particular persons or against a particular description of persons, proportionate to what the modification is intended to achieve and in relation to what it is intended to achieve, transparent.
- A2.6 Ofcom considers that the change is objectively justifiable because it will ensure the adequate provision of PCBs throughout the UK in order to meet the reasonable needs of end users in terms of geographic coverage, the number of PCBs and the quality of call box services.
- A2.7 The change does not discriminate unduly against particular persons because it applies equally to BT and Kingston as USO providers.
- A2.8 The change is proportionate in that it does not place an undue burden on BT and Kingston, while ensuring that end-users’ interests are taken into account.

A2.9 The change is transparent because the new definition of “Site” was publicised by means of a public consultation.

## Notification under section 48(1) of the Communications Act 2003

**Notification modifying the definition of “Site” under Paragraph 1 of Part 1 of the Schedule to the Notification designating British Telecommunications plc and Kingston Communications (Hull) plc as universal service providers and setting conditions, published by the Director General of Telecommunications on 22 July 2003 pursuant to the Electronic Communications (Universal Service) Regulations 2003 (‘the Universal Service Notification’).**

1. Ofcom, in accordance with section 48(2) of the Communications Act 2003 (‘the Act’), made a proposal to modify the definition of “Site” under Paragraph 1 of Part 1 of the Schedule to the Universal Service Notification (‘the First Notification’).
2. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
3. Ofcom invited representations about the proposal set out in the First Notification and the consultation document accompanying the First Notification by 28 September 2005.
4. By virtue of section 48(5) of the Act, Ofcom may give effect to any proposal to modify conditions set out in the First Notification, with or without modification to the proposal, where:
  - (a) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
  - (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
5. Ofcom have considered every representation duly made to them in respect of the proposals set out in the First Notification and the accompanying consultation document; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
6. The modification of the Universal Service Notification is set out in the Schedule to this Notification.
7. The effect of, and Ofcom’s reasons for making, the modification of the Universal Service Notification is set out in the accompanying explanatory memorandum and statement.
8. Ofcom considers that the modification of the Universal Service Notification complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposal.
9. In making the modification of the Universal Service Notification, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six community requirements in section 4 of the Act.
10. Copies of this Notification and the accompanying explanatory memorandum have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
11. The Schedule to this Notification shall form part of this Notification.

A handwritten signature in black ink, appearing to read "Neil Buckley", with a horizontal line underneath. A vertical red line is positioned to the right of the signature.

**Neil Buckley**

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

**14 March 2006**

## Schedule

**Modification to the definition of “Site” under Paragraph 1 of Part 1 of the Schedule to the Notification designating British Telecommunications plc and Kingston Communications (Hull) plc as universal service providers and setting conditions, published by the Director General of Telecommunications on 22 July 2003 pursuant to the Electronic Communications (Universal Service) Regulations 2003 (‘the Universal Service Notification’).**

- A. The definition of “Site” under Paragraph 1 of Part 1 of the Universal Service Notification shall be deleted and replaced by:

“Site”, in relation to a Public Call Box, means any area within a walking distance of 400 metres from that Public Call Box.

## Annex 3

# PCBs: Notification of changes to Direction

## Explanatory Memorandum

- A3.1 Ofcom consulted on changes to the procedures for the complete removal of PCBs from a Site that amend the list of local public bodies that can object to the proposed removal to district, unitary authority or equivalent level, amend the definition of “Site” to a walking distance of 400 metres from a PCB, extend the consultation period from 42 to 90 days and introduce a new requirement that at least 70 per cent of PCBs that provide call box services shall offer cash payment facilities. As explained in paragraphs 4.24 to 4.51, the changes reflect changing market conditions and responses received to the consultation.
- A3.2 Ofcom has sent a copy of the notification set out in this Annex to the Secretary of State in accordance with section 50(1) of the Act. Ofcom also considers it appropriate to send a copy of the notification to the European Commission under section 50(6) of the Act, given that the Commission is currently consulting on its review of the scope of universal service as further described at paragraph 1.20 of the main statement.

## Section 3 and section 4 analysis

- A3.3 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4 of the Act. The changes further the interests of citizens in relation to communication matters and of consumers in relevant markets because, as long as there remains a PCB within a Site, the PCB cannot be removed without BT or Kingston complying with their obligations to consult with relevant public bodies. The changes promote the interests of all persons who are citizens of the European Union by ensuring that the reasonable needs of end users are met in terms of geographical coverage, the number of PCBs and the quality of call box services.

## Section 49 analysis

- A3.4 Under section 49 of the Act, Ofcom must not modify a direction unless it is objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates, not such as to discriminate unduly against particular persons or against a particular description of persons, proportionate to what the modification is intended to achieve and in relation to what it is intended to achieve, transparent.
- A3.5 Ofcom considers that the changes are objectively justifiable because they will ensure the adequate provision of PCBs throughout the UK in order to meet the reasonable needs of end users in terms of geographic coverage, the number of PCBs and the quality of call box services.
- A3.6 The changes do not discriminate unduly against particular persons because they apply equally to BT and Kingston as USO providers.
- A3.7 The changes are proportionate because public bodies are under a statutory obligation to comply with the consultation and notification requirements in section 49 of the Act before they object to the removal of the last PCB from a Site and to

## Universal Service Review

provide reasons. BT and Kingston have a statutory right of appeal under section 192 of the Act against the decision of a public body.

- A3.8 The changes are transparent because the new procedures for the complete removal of PCBs from a Site were publicised by means of a public consultation.

## Notification under section 49(1) of the Communications Act 2003

### Notification modifying a Direction imposed on British Telecommunications plc and Kingston Communications (Hull) plc under Condition 3 in Parts 2 and 3 of the Schedule to a Notification published by the Director General of Telecommunications on 22 July 2003 pursuant to the Electronic Communications (Universal Service) Regulations 2003 ('the 2003 Direction').

1. Ofcom, in accordance with section 49(4) of the Communications Act 2003 ('the Act'), made a proposal to modify the 2003 Direction ('the First Notification').
2. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act and to the European Commission in accordance with section 50(6) of the Act.
3. Ofcom invited representations about the proposal set out in the First Notification and the consultation document accompanying the First Notification by 28 September 2005.
4. By virtue of section 49(9) of the Act, Ofcom may give effect to any proposal to modify conditions set out in the First Notification, with or without modification to the proposal, where:
  - (a) they have considered every representation about the proposal that is made to them within the period specified in the First Notification; and
  - (b) they have had regard to every international obligation of the United Kingdom (if any) which has been notified to them for this purpose by the Secretary of State.
5. Ofcom have considered every representation duly made to them in respect of the proposals set out in the First Notification and the accompanying consultation document; and the Secretary of State has not notified Ofcom of any international obligation of the United Kingdom for this purpose.
6. The modification of the 2003 Direction is set out in the Schedule to this Notification.
7. The effect of, and Ofcom's reasons for making, the modification of the 2003 Direction is set out in the accompanying explanatory memorandum and statement.
8. Ofcom considers that the modification of the 2003 Direction complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposals.
9. In making the modification of the 2003 Direction, Ofcom has considered and acted in accordance with their general duties in section 3 of the Act and the six community requirements in section 4 of the Act.
10. Copies of this Notification and the accompanying explanatory memorandum have been sent to the Secretary of State in accordance with section 50(1)(b) of the Act and to the European Commission in accordance with section 50(6) of the Act.

11. The Schedule to this Notification shall form part of this Notification.

A handwritten signature in black ink, appearing to read "Neil Buckley", with a horizontal line underneath it. To the right of the signature is a vertical red line.

**Neil Buckley**

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

**14 March 2006**

## Schedule

**Modification of a Direction imposed on British Telecommunications plc and Kingston Communications (Hull) plc under Condition 3 in Parts 2 and 3 of a Notification published by the Director General of Telecommunications on 22 July 2003 pursuant to the Electronic Communications (Universal Service) Regulations 2003 ('the 2003 Direction').**

### Part 1: Definitions and Interpretation

1.1 For the purpose of interpreting this Direction the following definitions shall apply:

“Relevant Public Body” means:

- a) In relation to England, the relevant local District Council (in two-tier local authority areas), London Borough Council, Metropolitan Council, Unitary Council, the Corporation of London or the Council of the Isles of Scilly;
- b) In relation to Northern Ireland, the Unitary District;
- c) In relation to Scotland, the Unitary Council;
- d) In relation to Wales, the County or County Borough Council; or

any successor bodies or organisations from time to time.

“Site”, in relation to a Public Call Box, means any area within a walking distance of 400 metres from that Public Call Box; and

“The Universal Service Notification” means a Notification published by the Director General of Telecommunications on 22 July 2003 pursuant to the Electronic Communications (Universal Service) Regulations 2003 designating British Telecommunications plc and Kingston Communications (Hull) plc as universal service providers and confirming the universal service conditions;

“Universal Service Provider” means British Telecommunications plc and Kingston Communications (Hull) plc”;

1.2 Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them in this Direction (including in the Parts) and otherwise any word or expression shall have the same meaning it has in the Act the Universal Service Notification (including in the Annexes) the Universal Service Regulations or the Condition as appropriate.

1.3 For the purpose of interpreting this modified Direction:

- (a) Headings and titles shall be disregarded; and
- (b) The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

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

## Part 2: The Direction

### Complete removal of Public Call Boxes and/or Call Box Services from a Site

- 2.1 The Universal Service Provider shall not remove or re-site any of its Public Call Boxes and/or cease to provide Call Box Services where such removal re-siting or cessation of provision would result in the complete removal of Public Call Boxes and/or Call Box Services from a Site unless the requirements set out in paragraphs 2.2 to 2.4 of this Direction have been satisfied.
- 2.2 The Universal Service Provider shall display a notice in a prominent place on the Public Call Box which it proposes to remove or re-site and/or to which it intends to cease to provide Call Box Services informing the public of the proposed change and setting out ('the payphone notice'):
- a) The nature and effect of the proposal;
  - b) The period within which members of the public may make representations about the proposal, which shall be 42 days after the day on which the notice is first displayed;
  - c) A free-call telephone number which can be used by the public to check the location of the nearest alternative Public Call Box providing Call Box Services; and
  - d) The Relevant Public Body to whom representations may be made about the proposal.
- 2.3 The Universal Service Provider shall give written notice of its proposed removal or re-siting of a Public Call Box and/or the cessation of the provision of Call Box Services to the Relevant Public Body setting out ('the written notice'):
- a) The nature and effect of the proposal;
  - b) Any information in support of the proposal;
  - c) The date on which the payphone notice was first displayed on the Public Call Box (and provide a copy);
  - d) A web link to Ofcom's guidance on procedures for the complete removal of public call boxes and/or call box services from a site; and
  - e) That objection may be made to the Universal Service Provider by the Relevant Public Body.
- 2.4 The Universal Service Provider shall not bring its proposal into effect if it has received any written objection to the proposal by the Relevant Public Body within the period ending 90 days after the day on which notice was given under paragraph 2.3.

### Cash payment

- 2.5 The Universal Service Provider shall ensure that at least 70 per cent of Public Call Boxes providing Call Box Services shall offer cash payment facilities.

### Request for new Public Call Boxes

- 2.6 In considering a request for the provision of a new Public Call Box and related Call Box Services in order to meet the reasonable needs of a local community the Universal Service Provider shall take into account:

- a) The size of the local community which is said to require the provision of a new Public Call Box and related Call Box Services;
- b) The quality of housing which exists in the said local community; and
- c) The distance from an existing Public Call Box to the proposed new Public Call Box.

2.7 The Universal Service Provider shall allocate a score to the proposal as appropriate by reference to each of the factors in paragraph 2.6 and shall decide whether or not to grant the request on the basis of the total score. The available scores are:

Size of community	Score	Housing type	Score	Access to existing PCB	Score
<100	1	Quality private	0	Within 5-10 minutes walk	1
100-200	2	General private	2	Within 10-15 minutes walk	3
200-500	3	Private rented or multi-occupancy	4	No provision within one mile	4
500+	4	Good social housing	4	No provision within three miles	5
		Poor social housing	6	No provision within six miles	6

2.8 Where the total score is 10 or more the Universal Service Provider shall grant the request for a new Public Call Box and related Call Box Services. Except in exceptional circumstances, where the total score is eight or less the Universal Service Provider need not grant the request. Where the total score is nine the Universal Service Provider shall give due consideration to the request and shall grant the request if appropriate.

## Annex 4

# Guidance on procedures for the complete removal of public call boxes and/or call box services from a site

## 1. Introduction and overview

- 1.1 Ofcom published on 14 March 2006 a Direction setting out:
- Procedures for the complete removal of Public Call Boxes (PCBs) and Call Box Services from a Site;
  - Procedures for requests for new PCBs and related Call Box Services; and
  - The requirement that at least 70 per cent of PCBs offer cash payment facilities.
- 1.2 This guidance is intended to promote consistency of decisions between Relevant Public Bodies. It also provides examples of circumstances in which the Universal Service Provider might reasonably remove the cash payment facility from a PCB.

## 2. Status of this guidance

- 2.1 Compliance with this guidance does not guarantee compliance with any legal requirement.
- 2.2 Except insofar as the context otherwise requires, words or expressions shall have the same meaning they have in the Direction.

## 3. Overview

- 3.1 The following diagram shows the various stages in the procedures for the complete removal of PCBs and/or Call Box Services from a Site. Each stage is described in more detail in this guidance

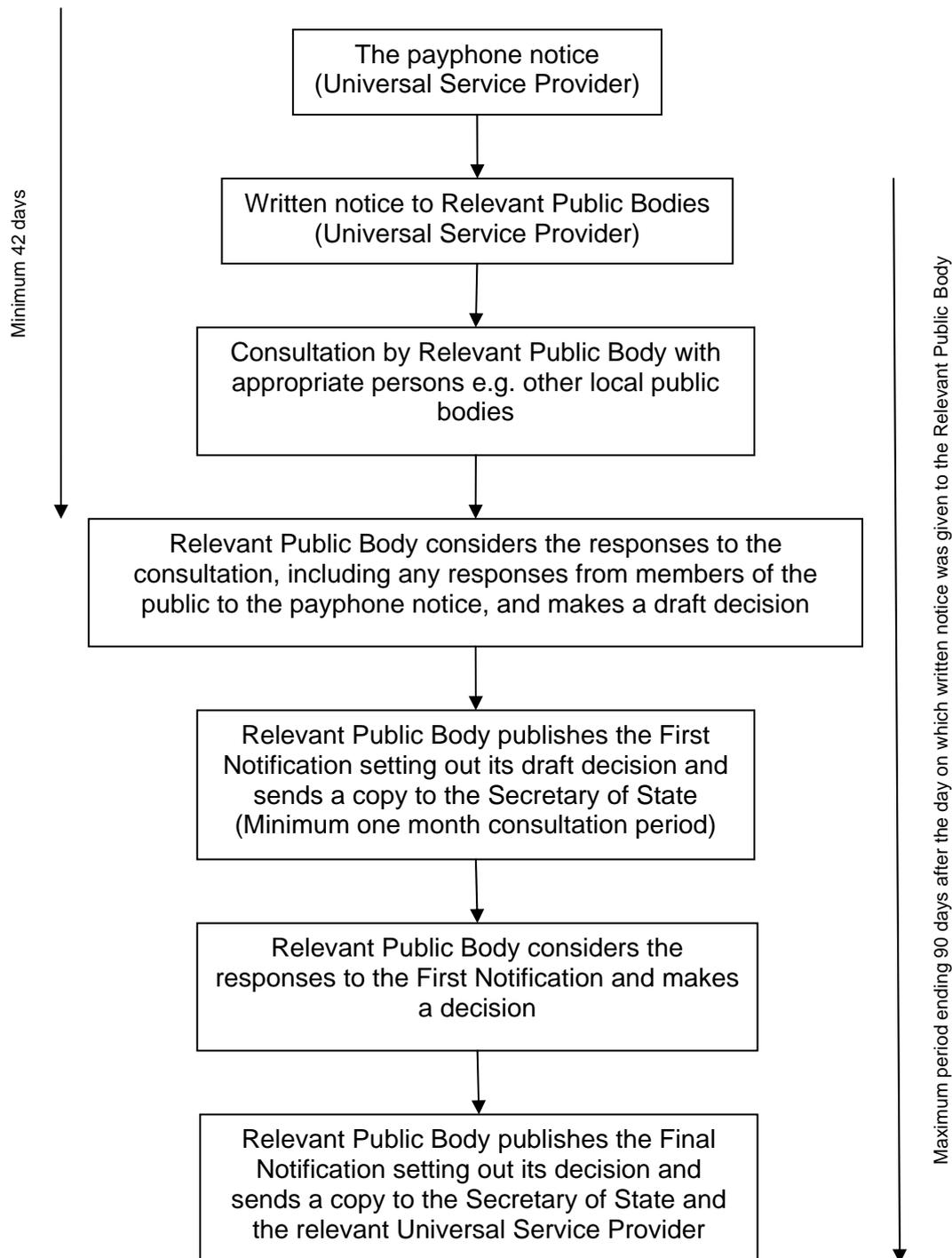


Diagram: Procedure for the complete removal of Public Call Boxes from a Site

## 4. The payphone notice

4.1 Under paragraph 2.2 of the Direction, the Universal Service Provider must display a notice in a prominent place on the Public Call Box which it proposes to remove or re-site and/or to which it intends to cease to provide Call Box Services informing the public of the proposed change and setting out ('the payphone notice'):

- The nature and effect of the proposal;
- The period within which members of the public may make representations about the proposal, which shall be 42 days after the day on which the notice is first displayed;
- A free-call telephone number which can be used by the public to check the location of the nearest alternative Public Call Box providing Call Box Services; and
- The Relevant Public Body to whom representations may be made about the proposal.

## 5. Written notice to relevant public bodies

5.1 Under paragraph 2.3 of the Direction, the Universal Service Provider must also give written notice of its proposed removal or re-siting of a Public Call Box and/or the cessation of the provision of Call Box Services to the Relevant Public Body setting out ('the written notice'):

- The nature and effect of the proposal;
- Any information in support of the proposal;
- The date on which the payphone notice was first displayed on the Public Call Box (and provide a copy);
- A web link to Ofcom's guidance on procedures for the complete removal of Public Call Boxes and/or call box services from a site; and
- That objection may be made to the Universal Service Provider by the Relevant Public Body.

## 6. Consultation

6.1 The Relevant Public Body should bring the contents of the payphone and written notice to the attention of such persons as it considers appropriate, asking for comments on the proposal to be made to the Relevant Public Body within a stipulated period.

6.2 Such persons might include other local public bodies, for example the parish or community council. In Northern Ireland, the Relevant Public Body should also consider which local community groups, if any, to consult with.

6.3 It is likely that Relevant Public Bodies will already have in place various consultation mechanisms and procedures which allow local issues to be discussed with local communities, for example local strategic partnerships and neighbourhood-based systems of local meetings.

## 7. Responses to consultation

- 7.1 The Relevant Public Body should consider the responses to the consultation, if any, received within the stipulated period, and including responses from members of the public received by them within the 42 days period after the payphone notice was first displayed on the Public Call Box.
- 7.2 In deciding whether to consent or object to the proposal, the Relevant Public Body must be satisfied that its decision is:
- Objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - Not such as to discriminate unduly against particular persons or against a particular description of persons;
  - Proportionate to what it is intended to achieve; and
  - In relation to what it is intended to achieve, transparent.
- 7.3 The Relevant Public Body must also be satisfied that it acted in accordance with the six Community requirements set out in section 4 of the Communications Act 2003 ('the Act'). These are:
- To promote competition in the provision of electronic communications networks and services, associated services and facilities and the supply of directories;
  - To contribute to the development of the European internal market;
  - To promote the interests of all persons who are citizens of the European Union;
  - Not to favour one form of, or means of, providing electronic communications networks or services i.e. to be technology neutral;
  - To encourage network access and service interoperability for the purpose of securing competition in the electronic communication networks and services markets and the maximum benefit for customers of communications providers; and
  - To encourage compliance with standards necessary for facilitating service interoperability and securing freedom of choice for the customers of communications providers.
- 7.4 Where it appears to a Relevant Public Body that any of the Community requirements conflict with each other they must secure that the conflict is resolved in a manner they think best in the circumstances.
- 7.5 To assist Relevant Public Bodies to consider the responses, and to make a decision to consent or object to the proposal, Ofcom has included in this guidance factors which it considers relevant to the decision. Relevant Public Bodies should refer to these factors.

## 8. First notification

- 8.1 Having considered the responses to the consultation, if any, the Relevant Public Body must publish its draft decision in the form of a notification ('the First

Notification'). To assist Relevant Public Bodies, Ofcom has included in this guidance a specimen notification. The First Notification must:

- State that there is a proposal for the complete removal of Public Call Boxes and/or Call Box Services from a Site;
  - Identify the Universal Service Provider whose proposal it is;
  - Set out the draft decision to consent or object to the proposal;
  - Set out the effect of the draft decision to consent or object to the proposal;
  - Give reasons for the draft decision to consent or object to the proposal;
  - Specify the period within which representations may be made about the proposal to the Relevant Public Body;
  - Confirm that the draft decision complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposal;
  - Confirm that in making the draft decision, the Relevant Public Body have considered and acted in accordance with the six Community requirements in section 4 of the Act;
  - Confirm that a copy of the First Notification has been sent to the Secretary of State.
- 8.2 Except in exceptional circumstances justifying the use of a shorter period, the period mentioned in paragraph 8.1 for representations must be one ending not less than one month after the day of the publication of the First Notification.
- 8.3 The publication of the First Notification must be in such a manner as appears to the Relevant Public Body to be appropriate for bringing the contents of the notification to the attention of such persons as it considers appropriate.
- 8.4 Such persons might include other local public bodies, for example, the parish or community council. In Northern Ireland, it might include local community groups. Ofcom would expect the Relevant Public Body to send a copy of the First Notification to the relevant Universal Service Provider.
- 8.5 The Relevant Public Body must also send a copy of the First Notification to the Secretary of State. Ofcom has included in this guidance a specimen letter for this purpose.
- 8.6 Under section 50(6) of the Act the Relevant Public Body may if appropriate also send a copy of the First Notification to the European Commission. Ofcom does not believe there will normally be a need to notify the Commission in the case of proposed Public Call Box removals.

## 9. Final Notification

- 9.1 The Relevant Public Body may consent or object to a proposal only if it has considered every representation about the proposal that is made to it within the period specified in the First Notification and has had regard to every international

obligation of the UK (if any) which has been notified to Ofcom for the purposes of this requirement (none to date).

9.2 Having considered the responses to the First Notification, if any, the Relevant Public Body must publish its decision in the form of a notification ('the Final Notification'). To assist Relevant Public Bodies, Ofcom has included in this guidance a specimen notification. The Final Notification must:

- State that there is a proposal for the complete removal of Public Call Boxes and/or Call Box Services from a Site;
- Identify the Universal Service Provider whose proposal it is;
- Set out the decision to consent or object to the proposal;
- Set out the effect of the decision to consent or object to the proposal;
- Give reasons for the decision to consent or object to the proposal;
- Confirm that the decision complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposal;
- Confirm that in making the decision set out in the Final Notification, the Relevant Public Body have considered and acted in accordance with the six Community requirements in section 4 of the Act;
- Confirm that a copy of the First Notification was sent to the Secretary of State; and
- Confirm that a copy of the Final Notification has been sent to the Secretary of State.

9.3 The publication of the Final Notification must be in such a manner as appears to the Relevant Public Body to be appropriate for bringing the contents of the notification to the attention of such persons as it considers appropriate.

9.4 Such persons might include other local public bodies, for example the parish or community council. In Northern Ireland, it might include local community groups.

9.5 The Relevant Public Body must send a copy of the Final Notification to the relevant Universal Service Provider.

9.6 The Relevant Public Body must also send a copy of the Final Notification to the Secretary of State. Ofcom has included in this guidance a specimen letter for this purpose.

9.7 Under section 50(6) of the Act the Relevant Public Body may if appropriate also send a copy of the Final Notification to the European Commission. Ofcom does not believe there will normally be a need to notify the Commission in the case of proposed Public Call Box removals.

## 10. The local veto

10.1 The Universal Service Provider must not bring its proposal into effect if it has received any written objection to the proposal by the Relevant Public Body within the period ending 90 days after the day on which written notice was given by the Universal Service Provider to the Relevant Public Body ('the local veto'). It is for this

## **Universal Service Review**

reason that the Relevant Public Body must send a copy of the Final Notification to the relevant Universal Service Provider – see paragraph 9.5 above.

# Relevant factors

## Purpose

- A.1 It is the Universal Service Provider's obligation to ensure the adequate provision of Public Call Boxes and/or Call Box Services to meet the reasonable needs of end-users in terms of numbers, geographical coverage and quality of services. It is against this obligation that a Relevant Public Body must assess a proposal for the complete removal of Public Call Boxes and/or Call Box Services from a Site.
- A.2 This is intended to give guidance on the factors to take account of when considering a proposal for the complete removal of Public Call Boxes and/or Call Box Services from a Site. It is intended also to promote consistency of decisions between Relevant Public Bodies. Relevant Public Bodies may consider other factors such as the proximity of the nearest alternative Public Call Box, the nature of the area (for example, a tourist area or close to a children's home or similar accommodation) or, in the case of text phones, use by deaf users. However, any decision of a Relevant Public Body must comply with the requirements in paragraphs 7.2 and 7.3 of this guidance.
- A.3 It is likely that Relevant Public Bodies will already have access to information against which they can make an assessment. While the following is not an exhaustive list of sources of information, Relevant Public Bodies might consider:
- ACORN is a demographic tool used to identify and understand the UK population – [www.caci.co.uk](http://www.caci.co.uk);
  - PRiZM is a commercial product built from lifestyle and demographic data at postcode level - [www.claritas.co.uk](http://www.claritas.co.uk);
  - The National Statistics Service offers access to a range of social and economic aggregate data relating to small geographic areas - [www.neighbourhood.statistics.gov.uk](http://www.neighbourhood.statistics.gov.uk) ; and
  - UpMyStreet let you search and compare detailed information about a specific postcode, city, town, district or region – [www.upmystreet.com](http://www.upmystreet.com)

## Factors

- A.4 Set out below are some (not exhaustive) important factors which might be assessed when considering a proposal for the complete removal of Public Call Boxes and/or Call Box Services from a Site.

### Housing type in the area

- A.5 A Relevant Public Body may consider whether the area within the same postcode as a Public Call Box is predominately owner-occupied, privately rented or council housing. The more owner-occupied housing in the area the more likely it is that people living in that area would have access to mobile and fixed telephones. If there is predominantly private rented or council housing in the area, this may suggest

people on a lower income without access to mobile and fixed telephones and support the view that a Public Call Box should be retained.

### **Number of households in the area**

- A.6 There may be concerns about alternative access to telephone services for low population densities. A Relevant Public Body may determine the number of households within the same postcode as a Public Call Box. The number of households within 400 metres of a Public Call Box could be seen as the catchment area for that Public Call Box.
- A.7 The number of households in the area would not however include any passing traffic or reflect that a Public Call Box might be situated on a main road or busy terminus. Such detail should be assessed on a case-by-case basis.

### **Public call box revenue**

- A.8 BT and Kingston may be willing to provide information about the revenue generated by a particular Public Call Box. This should help measure Public Call Box usage and could be an indicator of its value to the community. The lower the annual revenue that a Public Call Box generates, there could be grounds for its removal.
- A.9 Consideration may be given by a Relevant Public Body to the other factors listed above before it relies on annual revenue alone to support a decision to consent or object to the complete removal of Public Call Boxes and/or Call Box Services from a Site. The annual revenue of a Public Call Box should be assessed on a case-by-case basis.

### **Emergency calls**

- A.10 Many people place great value on having the option to use a Public Call Box in an 'emergency'. However, not all calls considered as emergency calls by the public are calls to the emergency services, for example police, fire, ambulance and coastguard services. For example, people often cite calls to roadside breakdown as being emergency calls.
- A.11 According to BT, it does not collect data on the number of calls made to the emergency services from Public Call Boxes. The importance of retaining a PCB for 'emergency calls' should therefore be assessed on a case-by-case basis. The body needs to think about whether a particular Public Call Box is more likely to be used for emergency calls than another. For example if there are alternative means of making calls available locally and/or there is good coverage for mobile phones, this may suggest that there is a reduced need to retain the phone box on emergency grounds. But if, for example, the call box is near a known accident black-spot, it may suggest it should be retained.

### **Mobile phone coverage**

- A.12 While three-quarters of adults now personally use a mobile phone, people often cite poor, sporadic or the lack of mobile network coverage at a location as being an important factor for retaining a Public Call Box.
- A.13 The main mobile networks, including 3, 02, Orange, T-Mobile and Vodafone allow you to check the network coverage in any given postcode area on their websites. While this might not be conclusive, it should help to assess network coverage within

the same postcode as a Public Call Box. Lack of mobile network coverage within the same postcode as a Public Call Box could also be assessed on a case-by-case basis.

## Example of a First Notification

### Notification under section 49(4) of the Communications Act 2003

**Draft decision by [public body] in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').**

1. [Public body], in accordance with section 49(4) of the Communications Act 2003 ('the Act'), hereby make the following draft decision in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Direction.
2. The draft decision is set out in the Schedule to this Notification.
3. The effect of, and [public body] reasons for making, the draft decision is set out in the Schedule to this Notification.
4. [Public body] consider that the draft decision complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposal.
5. In making the draft decision, [public body] has considered and acted in accordance with the six community requirements in section 4 of the Act.
6. Representations may be made to [public body] about the draft decision by [time] on [date].
7. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
8. The Schedule to this Notification shall form part of this Notification.

[Name]

A person authorised by [public body] to sign this Notification

[Date]

**Schedule**

**[Draft] decision by [public body] in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').**

	<b>Telephone number</b>	<b>Location</b>	<b>Decision (Object/Consent)</b>	<b>Reason(s)</b>
<b>1</b>				
<b>2</b>				
<b>3</b>				
<b>4</b>				

## Letter to the Secretary of State – First Notification

Telecoms Regulatory Policy

Department of Trade and Industry

207 Red

151 Buckingham Palace Road

London

SW1W 9SS

For the attention of Stephen Booth, Policy Advisor

Dear Sir

Draft decision by [public body] in response to proposals by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').

[Public body], in accordance with section 49(4) of the Communications Act 2003 ('the Act'), hereby make a draft decision in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Direction.

Section 50(1)(b) of the Act requires [public body] to send to the Secretary of State a copy of every notification published under section 49(4) of the Act. A copy of the First Notification is enclosed herewith.

Yours faithfully

## Example of Final Notification

### Notification under section 49 of the Communications Act 2003

**Decision by [public body] in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').**

1. On [date], [public body], in accordance with section 49(4) of the Communications Act 2003 ('the Act'), issued a notification setting out its draft decision in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Direction ('the First Notification').
2. A copy of the First Notification was sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
3. In the First Notification, [public body] invited representations about the draft decision by [time] on [date].
4. [Public body] has considered every representation about the draft decision duly made to it and Ofcom has not notified [public body] of any international obligation of the United Kingdom for this purpose.
5. The decision is set out in the Schedule to this Notification.
6. The effect of, and [public body] reasons for making, the decision is set out in the Schedule to this Notification.
7. [Public body] consider that the decision complies with the requirements of sections 45 to 50 of the Act, as appropriate and relevant to the proposals.
8. In making the decision, [public body] has considered and acted in accordance with the six community requirements in section 4 of the Act.
9. A copy of this Notification has been sent to the Secretary of State in accordance with section 50(1)(b) of the Act.
10. The Schedule to this Notification shall form part of this Notification.

## Schedule

**Decision by [public body] in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant**

to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').

	Telephone number	Location	Decision (Object/Consent)	Reason(s)
1				
2				
3				
4				

## Letter to the Secretary of State – Final Notification

Telecoms Regulatory Policy  
Department of Trade and Industry  
207 Red  
151 Buckingham Palace Road  
London  
SW1W 9SS

For the attention of Stephen Booth, Policy Advisor

Dear Sir

Decision by [public body] in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Schedule to a Direction published by Ofcom on 14 March 2006 ('the Direction').

[Public body], in accordance with section 49 of the Communications Act 2003 ('the Act'), hereby make a decision in response to a proposal by [British Telecommunications plc/Kingston Communications (Hull) plc] for the removal of public call boxes pursuant to Part 2 of the Direction.

Section 50(1)(b) of the Act requires [public body] to send to the Secretary of State a copy of every notification published under section 49 of the Act. A copy of the Final Notification is enclosed herewith.

Yours faithfully

## Annex 5

# Reasonable Requests: Explanatory Memorandum and consent to non-uniform charging

### Scope of this document

- A5.1 Following publication of a notification on 30 June 2005, this document sets out Ofcom's decision on a Consent to the provision to the provision by BT of non uniform prices in respect the services referred to in Universal Service Condition 1.1 in the UK except for the Hull Area.
- A5.2 Set out below is the justification for the Consent, the effect of the Consent, the reasons for making the Consent and an explanation of how Ofcom is meeting its duties under relevant sections of the Act in making these changes.
- A5.3 Ofcom has sent a copy of the Consent to the Secretary of State in accordance with section 50(1) of the Act. Ofcom also considers it appropriate to send a copy of the Consent to the European Commission under section 50(6) of the Act given that the Commission is currently consulting on its review of the European Framework.

### Clear justification

- A5.4 The Universal Service Order says that the matters set out in the schedule to the Order should be offered at prices that are affordable for all end-users and uniform throughout the United Kingdom unless Ofcom have determined that there is clear justification for not doing so.
- A5.5 Universal Service Condition 1 requires BT to provide access to basic telephony services on the basis of uniform prices throughout the UK except for the Hull Area unless Ofcom consent otherwise.
- A5.6 Ofcom considers that it has clear justification for consenting to the provision by BT of non uniform prices in respect the services referred to in Universal Service Condition 1.1 in the UK except for the Hull Area. As explained in paragraphs 6.5 to 6.20 Ofcom believes there is clear justification for non-uniform prices on the basis that retaining the threshold is and will continue to be beneficial to consumers. Ofcom's view is that this is the best way to manage the interests of the majority of consumers as well as the minority who live in remote or hard to reach areas. Retaining the threshold will provide better clarity and more opportunity for BT to be rigorous and consistent in complying with its obligation.

### Legal tests

- A5.7 The section below sets out Ofcom's reasons why it considers that the relevant legal tests under the Communications Act 2003 for granting the Consent as are met.

## Relevant tests

- A5.8 Ofcom is required to be satisfied that the granting of consents is in accordance with the requirements of section 49(2) of the Communication Act 2003 (The Act). Ofcom also has to consider and act in accordance with its general duties in section 3 of the Act and the six Community requirements in section 4 of the Act.
- A5.9 The Schedule sets out the Consent. The effect of, and reasons for making the Consent are set out in the paragraph headed "Clear justification" above.

## Section 3 and section 4 analysis

- A5.10 Ofcom has considered its duties under section 3 of the Act and all the Community requirements set out in section 4.
- A5.11 By consenting to non-uniform charging, Ofcom is furthering the interests of citizens in relation to communication matters and of consumers in relevant markets because it is simple for consumers to understand, straightforward for BT to implement and therefore provides certainty. Removal of the threshold could lead to customers who would be prepared to pay the excess being refused a connection by BT.
- A5.12 The Consent will help improve transparency and consistency and is proportionate in applying only to BT as a designated universal service provider. Consent to non-uniform charging also promotes the interest of all persons who are citizens of the European Union because it ensures requests for connection are met in an appropriate manner.

## Section 49 analysis

- A5.13 In addition, Ofcom is satisfied that, in accordance with section 49 (2) of the Act, the Consent is objectively justifiable because consenting to non-uniform prices strikes a balance between the interests of consumers and controlling BT's costs. Consumers are protected because excess charges will only be able to be charged above the threshold. BT's costs are controlled because it is not responsible for costs that it would be responsible for without the threshold.
- A5.14 Providing consent does not discriminate unduly against particular persons in that it applies to all those who are entitled to basic telephony services under Universal Service Condition 1.1. It is proportionate because the consent to non-uniform prices by way of the threshold means that BT's costs are controlled whilst at the same time, protecting consumers from excess charges below the threshold. Through the process of consultation, Ofcom has ensured that its proposals for the consent, and the reasoning behind them, are transparent.

## Representations

- A5.15 A large majority of respondents supported Ofcom's consent to non-uniform charging. They saw the application of a threshold as simple and transparent. The threshold ensures that customers with costly requirements are not inappropriately subsidised by the vast majority of customers. They also expressed concern that the removal of the threshold could lead to customers who would be prepared to pay the excess being refused a connection by BT.
- A5.16 However, two respondents suggested Ofcom needed to undertake further analysis to understand the level of suppressed demand that would be unleashed if the

threshold was removed and the cost of meeting that demand. Ofcom's decision to require BT to provide data on which the concept and level of the threshold can be tested going forward, was well supported.

### Conclusions

- A5.17 Ofcom gives its consent to the provision to the provision by BT of non uniform prices in respect the services referred to in Universal Service Condition 1.1 in the UK except for the Hull Area.
- A5.18 Ofcom is satisfied that in granting the Consent it has met all the relevant tests.

## Notification of proposals under section 49(4) of the Communications Act 2003

### Proposals for giving Consent to BT under Universal Service Condition 1, which is set out in the schedule to the notification published by the Director General on 22 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003

#### WHEREAS:

1. Ofcom hereby makes, in accordance with section 49 of the Act, the following Consent to be given to BT under Universal Service Condition 1, which is set out in the schedule to the notification published by the Director General on 21 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003.
2. The Consent is set out in the Schedule to this Notification.
3. The effect of the Consent and the reasons for making the proposal are set out in the accompanying explanatory memorandum.
4. Copies of this Notification and the accompanying explanatory memorandum have been sent to the Secretary of State in accordance with section 50(1)(a) of the Act and to the European Commission in accordance with section 50(6) of the Act.
5. For the purposes of this Notification:

“Act” means the Communications Act 2003;

“BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;

“Director General” means the Director General of Telecommunications;

“Ofcom” means the Office of Communications; and

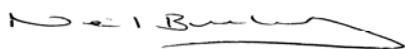
“Universal Service Conditions” means as set out in the Schedule to the notification published by the Director General on 21 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003”..

6. Except insofar as the context otherwise requires, words or expressions shall have the

## Universal Service Review

meaning assigned to them in this Notification and otherwise any word or expression shall have the same meaning as it has in the Universal Service Conditions and otherwise any word or expression shall have the same meaning as it has in the Act.

7. For the purpose of interpreting this Notification:
  - (i) headings and titles shall be disregarded; and
  - (ii) the Interpretation Act 1978 shall apply as if this Notification were an Act of Parliament.
  
8. The Schedule to this Notification shall form part of this Notification

A handwritten signature in black ink, appearing to read "Neil Buckley", with a horizontal line underneath it. To the right of the signature is a vertical red line.

**Neil Buckley**

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

**14 March 2006**

## Schedule

### **Consent to be given to BT under Universal Service Condition 1, which is set out in the Schedule to the notification published by the Director General on 22 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003**

#### WHEREAS:

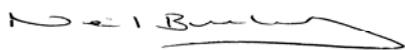
- (A) On 21 July 2003, the Director General published a notification under regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 setting out his proposals for the designation of universal service providers and the setting of Universal Service Conditions, including Universal Service Condition 1, that he intended to be given effect upon the coming in to force of any enactment which implemented the Universal Service Directive 2002/22/EC;
- (B) the proposals set out in the notification dated 21 July 2003 under regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003 automatically entered into force by virtue of the transitional provisions in the Act;
- (C) this Consent concerns matters to which Universal Service Condition 1 relates, in particular the requirement for BT to provide the service referred to in Universal Service Condition 1.1 on the basis of uniform prices in the UK except for the Hull Area (as defined in those conditions);
- (D) for the reasons set out in the explanatory memorandum accompanying this Consent, Ofcom is satisfied that, in accordance with section 49(2) of the Act, this Consent is:
  - a. objectively justifiable in relation to the networks, services, facilities, apparatus or directories to which it relates;
  - b. not such as to discriminate unduly against particular persons or against a particular description of persons;
  - c. proportionate to what it is intended to achieve; and
  - d. in relation to what it is intended to achieve, transparent;
- (E) for the reasons set out in the explanatory memorandum accompanying this Consent, 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;
- (F) on 30 June 2005, Ofcom published a notification of the proposed Consent in accordance with section 49(4) of the Act;

## Universal Service Review

- (G) Ofcom has considered every representation about the proposed Consent duly made to it; and

NOW THEREFORE Ofcom gives the following consent:

1. The obligation on BT in Universal Service Condition 1.2 to provide the services in Universal Service Condition 1.1 on the basis of uniform prices throughout the UK except for the Hull Area shall not apply where the provision of those services costs BT more than £3400 excluding VAT.
2. For the purpose of interpreting this Consent (including the recitals above), the following definitions shall apply:
  - “Act” means the Communications Act 2003;
  - “BT” means British Telecommunications plc, whose registered company number is 1800000, and any of its subsidiaries or holding companies, or any subsidiary of such holding companies, all as defined by section 736 of the Companies Act 1985, as amended by the Companies Act 1989;
  - “Director General” means the Director General of Telecommunications;
  - “Hull Area” means as set out in the Universal Service Conditions;
  - “Ofcom” means the Office of Communications; and
  - “Universal Service Conditions” means as set out in the Schedule to the notification published by the Director General on 21 July 2003 pursuant to regulation 4(10) of the Electronic Communications (Universal Service) Regulations 2003”..
3. Except insofar as the context otherwise requires, words or expressions used in this Consent shall have the meaning ascribed to them in paragraph 2 above and otherwise any word or expression shall have the same meaning as it has in the Universal Service Conditions and otherwise any word or expression shall have the same meaning as it has in the Act.
4. For the purpose of interpreting this Consent:
  - a. headings and titles shall be disregarded; and
  - b. the Interpretation Act 1978 shall apply as if this Consent were an Act of Parliament.



**Neil Buckley**

**A person duly authorised in accordance with paragraph 18 of the Schedule to the**

**Office of Communications Act 2002**

**14 March 2006**

## Annex 6

# Reasonable Requests: Guidance

- A6.1 Ofcom is publishing new Guidance on BT's obligation to provide a connection to the fixed network upon reasonable request.
- A6.2 This Guidance offers objective criteria to test the reasonableness of a request thereby helping BT and consumers understand the matters Ofcom would take into consideration should it receive a complaint as to whether BT has met its obligation. This will include social factors such as whether the customer is able to meet the costs of connection for reasons of vulnerability or disadvantage.

# Guidance on BT's obligation to provide a connection to the fixed network upon reasonable request

The purpose of this Guidance is to clarify the factors Ofcom would take into account in deciding whether BT had complied with its US obligation to provide a connection to the fixed network upon reasonable request.

Ofcom cannot fetter its discretion as to any future decision. Accordingly, this Guidance will not be binding upon Ofcom in the future. However, Ofcom would normally expect to follow this Guidance in determining what a reasonable request is.

Should Ofcom choose to depart from this Guidance in respect of any future decision it would set out its reasons for doing so. This Guidance may be subject to revision from time to time.

## The requirement to provide a connection to the fixed network upon reasonable request

1. A provider designated for the purposes of universal service ('the Provider') is required under the specific universal service conditions to provide a connection to the fixed network upon reasonable request.
2. This obligation relates to a single narrowband connection only. It does not extend to other types of connection such as broadband or ISDN.
3. These Guidelines clarify the factors Ofcom is likely to take into consideration should it receive a complaint as to whether the Provider has met its universal obligation to provide a connection upon reasonable request.
4. The importance of access to and use of the telephone network at a fixed location is such that it should be available to anyone reasonably requesting it. In forming a view on whether a request is reasonable, Ofcom will primarily look at:
  - The technical feasibility of providing a connection;
  - The cost of provision; and
  - Whether the customer is a member of a vulnerable group.

### Technical feasibility

5. There should be no constraints on the technical means by which the Provider chooses to provide a connection to the fixed network. This includes use of wireless technologies.
6. However, the Provider cannot be required to provide types of access which are not within its powers to provide.

### Cost of provision

7. It is important that universal service obligations are fulfilled in the most efficient fashion so that users generally pay prices that correspond to efficient cost provision.

## Universal Service Review

8. Where the Provider considers the cost of providing a connection has the potential to make the request unreasonable:
  - the provider must be able to demonstrate that it has looked for the most cost effective solution to meet the needs of the customer; and
  - the Provider must offer customers the opportunity to carry out certain elements of the connection work themselves, on their own land and at their own expense.
9. Multiple customers who take service simultaneously should be able to share excess construction charges, provided that they organise this co-operation themselves.
10. However, the Provider does not need to take into account whether other customers in a geographical area may subsequently also want service, thereby benefiting from the construction work carried out. Nor does the Provider need to retrospectively pay back to the customer the sum already paid if another customer uses the same plant, or some part of it, at a later date.

## Vulnerable groups

11. The provision of connections to the fixed network is particularly important to citizen-consumers more likely to suffer serious social isolation without adequate means of access to communications services. Providers should therefore given special consideration to request for connections made by vulnerable customers.
12. Ofcom has consented to non-uniform charging where the cost of providing a connection exceeds £3,400 (excluding VAT). However, Ofcom would expect a Provider to use its discretion when the cost of providing a connection exceeds £3,400, to provide such vulnerable customers with a connection at the standard charge.
13. Examples of such customers for whom Ofcom would expect the Provider to apply this discretion include:
  - Residential customers eligible for special tariff schemes targeted at low income customers; and
  - Residential customers who are unable to meet the costs of connection and have an acute need for connection for reasons of vulnerability or disability.
14. Ofcom considers that applying this discretion is particularly important where the customer's location means they do not have access to mobile services.

## Annex 7

# Functional Internet Access: Guidelines

- A7.1 Ofcom is amending Guidelines on Functional Internet Access.
- A7.2 Ofcom is retaining the existing Guidelines on FIA, including the benchmark minimum of 28.8 kbps. However, to improve clarity and understanding of the Guidelines, Ofcom is making amendments:
- to emphasise that FIA involves the provision of optimal speeds and that 28.8 kbps is a benchmark minimum speed;
  - to clarify the information to be provided by BT.
- A7.3 Retaining the existing Guidelines on FIA, including the benchmark minimum of 28.8 kbps provides the right balance between the interests of consumers and the impact upon the Providers. It is Ofcom's view that for limited gain in line speed, a greater burden of this kind could have the negative effect of diverting BT's attention and investment from important areas such as broadband and next generation networks. Minor amendments to the Guidelines will help emphasise that FIA involves the provision of optimal speeds and clarify the information to be provided by BT.

## Guidelines on functional internet access

The requirement to provide a connection which permits functional internet access

1. A provider designated for the purposes of universal service ('the Provider') is required under the specific universal service conditions to provide telephony services at data rates that are sufficient to permit functional Internet access.
2. This obligation relates to:
  - a single narrowband connection only: it does not extend to other types of connection, such as broadband or ISDN; and
  - the connection itself, not to other matters outside the control of the Provider, such as an end-user's computer or Internet service provider.
3. These Guidelines clarify the circumstances in which Ofcom is likely to consider that the Provider is offering functional internet access.
4. Ofcom will consider that the Provider is providing functional internet access where it is able to demonstrate that it is making every reasonable effort to ensure that lines achieve optimum performance, particularly where the end-user intends to use the line for internet access.
5. In forming a view on whether the Provider is making every such reasonable effort, Ofcom will look at:
  - the data rate achieved by the connection;
  - the measures taken by the provider in respect of pair-gain devices, such as DACS [Digital Access Carrier System];
  - the measures taken by the provider in response to complaints about unsatisfactory internet access, which are not related to pair-gain devices; and
  - the provider's general management and business processes.

Data speed achieved by the connection

6. Ofcom has considered the capabilities of networks, local line plant and terminal equipment currently available. It has concluded that end-users should be able to expect that single narrowband connections will support data transmission at a reasonable speed.
7. Providers must show they are making every reasonable effort to ensure lines can achieve optimal performance, not that they can meet minimum requirements. However, Ofcom is of the view that a connection speed of 28.8 kbps is an appropriate benchmark minimum for functional internet access. Over time, this rate may need to be revised to reflect advances in networks and equipment, and changing social and economic conditions.

Measures taken by the provider in respect of pair-gain systems

8. The following are an indication of the measures Ofcom expects the Provider to take in connection with pair-gain devices, such as DACS. There may be other scenarios not specifically addressed below; the

## Guidelines on functional internet access

following matters are nevertheless likely to be relevant.

Where an end-user requests a second line

9. The Provider should establish whether the second line is intended to be used for internet access.
10. If the line is intended to be used for internet access, the provider should take all reasonable steps to avoid fitting, or using existing, pair-gain systems. Reasonable steps include:
  - providing an unused line without pair-gain devices fitted;
  - rearranging existing lines to provide a line without pair-gain devices fitted
  - carrying out minor network infrastructure build to provide new lines without pair-gain devices fitted; and
  - carrying out any other reasonable measures to provide a new line in preference to the use of pair-gain devices.

Where an end-user complains about the performance of an existing line used to access the internet

11. Ofcom considers that where a line is fitted with a pair-gain device, such as DACS, the line is unlikely to achieve optimum performance.
12. Therefore, where an end-user complains about the performance of a line used to access the internet and the line is fitted with a pair-gain device, the Provider should take all reasonable steps to provide the end-user with a line without a pair-gain device fitted, for example by:
  - removing the pair-gain system altogether;
  - providing an unused line without pair-gain devices fitted;
  - rearranging existing lines to provide a line without pair-gain devices fitted;
  - transferring the pair-gain system to a more suitable line;
  - carrying out minor network infrastructure build to provide new lines without pair-gain devices fitted;
  - deploying an alternative, less detrimental pair-gain system where possible; or
  - carrying out any other reasonable measures to provide a new line in reference to the use of pair-gain devices.

Where the Provider is carrying out modifications to its network

13. If, having exhausted other options, the Provider needs to fit existing lines with pair-gain systems or transfer a pair-gain system to another line, it should ensure that this will not adversely affect an existing user of narrowband access to the internet.
14. There are several methods open to the Provider to assess the use of other lines, one of which is to examine call data records. Whilst Ofcom suggests this as an example of a reasonable method for checking the use of the line, the provider should be aware of its responsibilities with respect to the use of call data records. The information gained from call data records must only be used for the purposes of establishing whether narrowband internet access is used on a particular line. As detailed in Ofcom's *Statement on BT's marketing of internet services and use of joint billing (19 May 2002)*, it

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must not be used for any marketing purposes.

### Measures taken by the provider in response to complaints about unsatisfactory internet access, which are not related to pair-gain devices

#### Investigation

15. Where the Provider receives a complaint from an end-user about unsatisfactory connection speed, the Provider should take the end-user through a series of self-tests, such as checking the data speed displayed on the end-user's computer, and removing all other terminal equipment eg fax machines, from the connection
16. Further investigation, such as the Provider conducting a site visit to test the connection itself, is required only where it is established that the end-user is experiencing connection speeds which are persistently lower than the benchmark of 28.8 kbit/s. The Provider is not required to investigate further where the problem clearly falls outside its control, eg there is a problem with the end-user's computer or internet service provider.

#### Minor problem with the network

17. Unsatisfactory internet access may be caused by a minor problem, eg interference, a problem with the final link (underground or overhead) from the distribution point to the end-user's premises, or some other easily repairable fault.
18. Where the Provider establishes that there is a minor problem, it should take action at the earliest opportunity to ensure that the end-user's connection provides functional internet access, in particular that it is capable of achieving the benchmark data speed of 28.8 kbit/s.
19. Ofcom recognises that there may be circumstances where there is a significant problem with the network and it is not reasonable and/or proportionate to expect the Provider to take action on the basis of a single complaint about unsatisfactory internet access.
20. The Guidelines address two examples of such a significant problem below. There may be other scenarios not specifically addressed below; the following examples are nevertheless likely to be relevant.

#### Distribution ('D-side') cables

21. These are the secondary cables that link a primary connection point (known as a 'cabinet') to the final distribution point serving an end-user. One D-side cable will probably serve tens of distribution points but a particular distribution point is normally only served by one D-side cable.
22. Where the Provider establishes that there is a problem with a D-side cable, it should log the complaint against that particular cable and, when the threshold indicated below is reached, take action at the earliest

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reasonable opportunity to ensure that functional internet access, in particular a benchmark connection speed of 28.8 kbit/s, is provided to the affected end-users.

23. *Threshold:* where the Provider logs substantiated complaints regarding 10 per cent or more of the working circuits terminated on a particular cable at a particular distribution point or at a particular cabinet.

### Main ('E-side') cables

24. These are the cables that form the first stage of the route from the exchange building to the customer's premises. At the exchange end, they terminate on the main distribution frame. The remote end terminates in a cabinet. One E-side cable can serve several cabinets, and equally a particular cabinet can be served by more than one E- side cable.
25. Where the Provider establishes that there is a problem with an E-side cable, it should log the complaint against the particular cable and, when the threshold indicated below is reached, put in place a work programme to ensure that the problem is addressed at the earliest reasonable opportunity. As indicated under 'General management and business processes' below, the Provider should advise Ofcom of any such work programme.
26. *Threshold:* where the Provider logs substantiated complaints regarding 10 per cent or more of the working circuits terminated on a particular cable at a particular cabinet.

### General management and business processes

27. Where it is not possible on any given line to remove pair-gain devices or otherwise achieve a connection speed of 28.8 kbit/s in the short term, the Provider should be able to demonstrate that it is in the process of making, or planning to make, improvements to its network (whether equipment, lines or other part) not capable of supporting 28.8 kbit/s.
28. The Provider should establish appropriate management and business processes to:
- monitor the level of complaints from end-users on connection speeds for internet access and assess the underlying causes;
  - monitor the use of pair-gain systems within the network;
  - ensure that the impact of pair-gain systems upon internet access decreases over time; and
  - monitor the number of substantiated complaints regarding D-side and E-side cables
29. The Provider should provide Ofcom with quarterly reports, including details of any work programmes regarding improvements to its network to deliver functional internet access. These reports should include the following information:
- average final connect speeds of customers

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- the number of complaints from end-users on connection speeds for internet access and BT's assessment of the underlying causes for each case
- BT's use of pair-gain systems within the network, the proportion of lines affected and any reduction or increase in their use
- the number of substantiated complaints regarding D-side and E-side cables, as set out in the Guidelines (21- 26)