

**Direction under Section 106(3) of the Communications Act 2003 applying the electronic communications code in the case of Internal Communication Systems Limited**

**A Notification of this proposal was published on 19 February 2009**

Whereas:

- (A) On 5 February 2009, Internal Communication Systems Limited made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in the United Kingdom in accordance with section 107(1) of the Act and the notification published by Ofcom by virtue of the Transitional Provisions under section 107(2) of the Act on 10 October 2003 setting out their requirements with respect to the content of an application for the electronic communications code and the manner in which such an application is to be made;
- (B) On 19 February 2009, Ofcom published a notification of their proposal to give a direction applying the Code to Internal Communication Systems Limited in accordance with section 107 of the Act;
- (C) Ofcom proposed to apply the Code in Internal Communication Systems Limited's case in Lyndhurst, Hampshire only.
- (D) Ofcom did not receive any representations in relation to their proposal to give a direction applying the Code to Internal Communication Systems Limited;
- (E) For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that they have acted in accordance with their relevant duties set out in sections 3, 4 and 107(4) of the Act

**NOW, therefore, pursuant to section 106(3) of the Act, Ofcom make the following Direction-**

1. The electronic communications code shall apply to Internal Communication Systems Limited for the purposes of the provision by Internal Communication Systems Limited of an electronic communications network to have effect in Lyndhurst, Hampshire only.

Definitions and Interpretation

2. In this Direction, unless the contrary intention appears-

"Act" means the Communications Act 2003;

"Internal Communication Systems Limited " means Internal Communication Systems Limited (registered company number 4281502);

"Lyndhurst, Hampshire" means the area covered by postal code SO43 only;

"Ofcom" means the Office of Communications; and

"Transitional Provisions" means sections 408 and 411 of the Act, the Communications Act 2003 (Commencement No.1) Order 2003 and the Office of

Communications Act 2002 (Commencement No.3) and Communications Act 2003 (Commencement No 2) Order 2003.

3. Except in so far as the context otherwise requires, words and phrases shall have the same meaning as in the Act, headings and titles shall be disregarded and expressions cognate with those referred to in this Direction shall be construed accordingly.

4. The Interpretation Act 1978 shall apply as if this Direction were an Act of Parliament.

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

**Steve Unger**  
**Competition Policy Director**

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

**9 April 2009**

# Explanatory Statement

1.1 On 5 February 2009, Internal Communication Systems Limited applied for the electronic communications code (the “Code”) for the purposes of the provision by it of an electronic communications network. This application was made in accordance with section 107(1) of the Communications Act 2003 (the “Act”) and meets the requirements for any such application for a Direction applying the Code, and the manner in which such an application has to be made, as set out in the Notification published by Ofcom (by virtue of the Transitional Provisions in the Act) on 10 October 2003 under section 107(2) of the Act.

1.2 On 19 February 2009, Ofcom published a notification of its proposal to give a direction applying the Code to Internal Communication Systems Limited in accordance with section 107 of the Act. Ofcom did not receive any representations in relation to its proposal and has therefore decided to proceed and grant Code powers to Internal Communication Systems Limited.

1.3 In considering Internal Communication Systems Limited’s application, Ofcom has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act. In particular, Ofcom has considered its duty in section 3(1)(b) “to further the interests of consumers in relevant markets, where appropriate by promoting competition” and the first Community requirement set out in section 4(3)(a) to promote competition “in relation to the provision of electronic communications networks and services”.

1.4 Internal Communication Systems Limited proposes to build a localised fibre-to-the-home (FTTH) network in Lyndhurst in Hampshire which will support Internet Protocol TV (IPTV), Voice of Internet Protocol (VoIP), broadband, and other local community and business services. The network will therefore provide high speed broadband to the local community who have been unable to benefit from these capabilities previously. The network would therefore serve to further the interests of the local community and the application states that the network plans are to be delivered at the invitation of local residents.

1.5 In addition to the requirements of sections 3 and 4 of the Act, Ofcom has also had regard to its duties set out in section 107(4) of the Act. These are set out below.

## **The benefit to the public of the electronic communications network by reference to which the Code is to be applied to the applicant**

1.6 Lyndhurst is situated fairly centrally in the New Forest National Park and is approximately 10km from Southampton. Works undertaken in designated National Parks are subject to closer scrutiny than in other areas and, possibly as a result, Internal Communication Systems Limited has been unable to obtain a Section 50 licence under the New Road and Street Works Act 1991 as amended by the Traffic Management Act 2004 to carry out street works. The application does not state, however, whether the New Forest’s National Park status was relevant to the refusal to grant the relevant street works licence. Code operators are, in any case, still required to meet the requirements of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 including those relevant to protected areas (paragraph 8).

1.7 As explained in paragraph 1.4, Internal Communication Systems Limited aims to provide high speed broadband capabilities to residents and businesses based in

Lyndhurst, Hampshire using fibre optic technology. This technology will provide the local community with high speed services which include, as well as those referred to above, relaying Church, Doctor and Community services to residents and providing live video footage of Lyndhurst High Street (the busiest local thoroughfare) to households. Internal Communication Systems Limited has stated that the proposed network will therefore support the local community.

1.8 The application did not ask Ofcom to limit Code powers to Lyndhurst. However, Ofcom considers that in this case it should limit Code powers to a specific geographic area given that the application was clear that the network would, in the first instance, provide services to Lyndhurst only. In addition, Ofcom understands that Internal Communication Systems Limited has only sought street works licences for Lyndhurst and therefore there is no reason to believe that street works licences could not be sought for extensions to the network beyond Lyndhurst in the absence of Code powers.

1.9 Ofcom considers that Internal Communication Systems Limited's network is likely to support the local community and provide high speed services to Lyndhurst and that this is likely to have social and economic benefits.

### **The practicability of the provision of the network without the Code**

1.10 The Code enables, amongst other things, operators to construct their networks and, in particular, states that they "shall, for the statutory purposes, have the right to....(a) install electronic communications apparatus, or keep electronic communications apparatus installed, under, over, [in, on] along or across...a street." The Code is therefore a means by which these networks could be deployed quickly.

1.11 In this case, as explained in paragraph 1.6, Internal Communication Systems Limited has not been successful in seeking a street works licence and has therefore been unable to deploy its network on public highways.

### **The need to encourage the sharing of the use of electronic communications apparatus**

1.12 Internal Communication Systems Limited has not specifically stated that it would be willing to share its network with alternative communications providers and given the small scale nature of the deployment this is understandable. The ducting will, however, contain spare capacity (~50%) for residential and business electrical cables which will need to be replaced. Sharing cables in this manner would help to minimise street works going forward.

### **Whether the Applicant will be able to meet liabilities as a consequence of:**

**(i) the application of the Code; and**

**(ii) any conduct in relation to the application of the Code**

1.13 Internal Communication Systems Limited has already taken out an insurance policy in the event of any liabilities and understands that it would need to restructure this to meet the requirements of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 and particularly the Funds for Liabilities regime (paragraph 16).