

Notification under section 107(6) of the Communications Act 2003

Proposal to give a direction applying the Electronic Communications Code to UK Broadband

1. The Director-General of Telecommunications (the "Director"), in accordance with section 107(6) of the Communications Act 2003 (the "Act"), hereby makes the following proposal to give a direction under section 106(3) of the Act applying the Electronic Communications Code (the "Code") to UK Broadband. The Director is able to exercise powers under the Act pursuant to section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No. 1) Order 2003.

2. The draft Direction and the accompanying explanatory statement setting out the Director's reasons for the proposal are available at: www.ofcom.org.uk/legacy_regulators/oftel/. Hard copies of the draft Direction and the explanatory statement will be made available on request. Please contact Christina Spyrelli on 020 7783 4312 or by sending an e-mail to christina.spyrelli@ofcom.org.uk.

3. Representations on the proposal may be made to: Christina Spyrelli, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (telephone: 020 7783 4312, e-mail: christina.spyrelli@ofcom.org.uk) by not later than **21 January 2004**.

4. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received by Ofcom, with the exception of material marked confidential, will be published and made available for inspection in Ofcom's Knowledge Centre. Please contact Jan Kacperek on 020 79813790 or by e-mail at jan.kacperek@ofcom.org.uk for further information with respect to public inspection.

5. In this Notification, unless the contrary intention appears, words and phrases shall have the same meaning as in the Act.

6. In this Notification, "UK Broadband" means UK Broadband Limited (registered company number 4713634). (Formerly known as Poundradio Limited)

Neil Buckley

Policy Project Director

A person authorised under paragraph 8 of Schedule 1 to the Telecommunications Act 1984

19 December 2003

[Draft] Direction under section 106(3) of the Act applying the Electronic Communications Code in the case of UK Broadband

[A Notification of this proposal was published on 19 December 2003]

Whereas:

- (A) on 12 November 2003 UK Broadband made an application for the electronic communications code (the "Code") for the purposes of the provision of an electronic communications network in accordance with section 107(1) of the Act and the Notification published by the Director under section 107(2) of the Act setting out his 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 December 2003 the Director published a notification of his proposal to give a direction applying the Code to UK Broadband in accordance with section 107 of the Act;
- (C) the Director has considered every representation made to him about the proposed Direction;
- (D) for the reasons set out in the explanatory statement accompanying this Direction, the Director is satisfied that he has acted in accordance with the relevant duties set out in sections 4 and 107(4) of the Act;
- (E) the Director is able to exercise powers under the Act pursuant to section 408 of the Act and Article 3(1) of the Communications Act 2003 (Commencement No.1) Order 2003, until Ofcom assumes those powers at a later date;

NOW, therefore, pursuant to section 106(3) of the Act, the Director makes the following direction-

1. The electronic communications code shall apply to UK Broadband for the purposes of the provision by UK Broadband of an electronic communications network to have effect in relation to the United Kingdom.

Definitions and Interpretation

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

"Act" means the Communications Act 2003;

"Director" means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984; and

“UK Broadband” means UK Broadband Limited (registered company number 4713634) (formerly known as Poundradio Limited)

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.

[name of person signing the Direction]

[date]

EXPLANATORY STATEMENT

1. On 31 October 2003 UK Broadband Limited (“UK Broadband”) made an application for the electronic communications code (the “Code”) for the purposes of the provision of an electronic communications network. This was in accordance with section 107(1) of the Communications Act 2003 (the “Act”). In addition, UK Broadband’s application was made in accordance with the requirements with respect to the content of an application for a direction applying the Code and the manner in which such an application is to be made, as set out in a Notification published by the Director on 10th October 2003 under section 107(2) of the Act.
2. In considering UK Broadband’s application the Director had regard to his duties under section 4 of the Act to act in accordance with the Community requirements, in particular the requirements to promote competition in the provision of electronic communications networks and services, and to promote the interests of European citizens. He also had regard to the factors set out below, in accordance with his duties under section 107(4) of the Act.

The benefit to the public of the electronic communications network by reference to which the code is to be applied to UK Broadband

3. UK Broadband intends to provide a public fixed wireless access network using radio at 3.4GHz spectrum as the means of access in order to offer broadband services. UK Broadband’s licensed regions for the purposes of the provision of the public fixed wireless access network at 3.4GHz are further defined in the paragraph II.C.6.2 of the Wireless Telegraphy (Broadband Fixed Wireless Access Licences) Notice 2003 (the “Provisional Award Notice”) issued by the Radiocommunications Agency on behalf of the Secretary of State for Trade & Industry. The Provisional Award Notice is available at: <http://www.radio.gov.uk/topics/pfwa/34ghz/docs/provawardpoundradio2.doc>
4. The Director is of the view that the provision of such an electronic communications network may accelerate broadband service penetration in the United Kingdom, especially in suburban and rural areas, and has the potential to enhance competition in a newly-formulated market within the United Kingdom.
5. In addition, a broader coverage of broadband access in the United Kingdom will further benefit consumers and outweigh any disbenefits, as a wider choice of services will be available to the general public, and the Director considers that any disruption will be likely to be of short term duration.

The practicability of the provision of the network without the application of the code

6. The Director considers that it will not be practicable for UK Broadband to provide its electronic communications network without the application of the Code. This is demonstrated in its application, where the estimates of the savings in time and cost that the application of the Code will bring to UK Broadband are set out.
7. The Director is of the view that a lack of code powers for UK Broadband would cause significant delays in terms of deploying its network, even though its initial plan is to use shared infrastructure as often as possible.
8. Such a delay can have a negative impact on the development of competition in the market and most importantly on consumer choice.

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

9. UK Broadband has provided evidence to the Director of its ability and willingness to share apparatus.
10. Based on the information provided, UK Broadband is willing to exercise diligence when installing apparatus and intends to refrain from installing infrastructure in conservation and protected areas. UK Broadband has stated that it intends to roll out its network wherever possible and practicable through sharing infrastructure.
11. In addition, the Director believes that UK Broadband is fully aware of the environmental issues with respect to radio sites. UK Broadband has already started a consultation process with stakeholders in areas where the service will be offered in order to ensure that their network locations and designs are both efficient and environmentally friendly before building any infrastructure. The Director believes that such an approach is not only a good example of co-operation at a local level but also a good means of exploring alternative ways of, and arrangements for, providing services.

Whether UK Broadband in whose case it is proposed to apply the code will be able to meet liabilities arising as a consequence of- **(i) the application of the code in his case; and** **(ii) any conduct of his in relation to the matters with which the code deals**

12. The Director is of the view that UK Broadband in whose case it is proposed to apply the code has provided sufficient evidence of its ability and willingness to meet potential liabilities. In particular, UK Broadband submitted a letter signed by a director certifying that it is

going to put sufficient funds for liabilities in place before exercising code powers.

13. At this application phase, a person applying for the Code does not have to specify the instrument they are going to use before exercising code powers, as long as they acknowledge their legal obligations and they investigate their options in the market.
14. If a person is granted code powers, then under Regulation 16 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003 two weeks before first exercising those powers, they must submit a certificate to the Director certifying that sufficient funds are in place to meet liabilities and the amount of funds which have been provided for. The certificate must be accompanied by a copy of the instrument which will provide the funds.

Timetable and consultation process:

15. In accordance with sections 107(6)(b), 107(7)(c) and 107(9) of the Act the Director must consider any representations about this proposal that are made to him within a specified period, which must end no less than one month after the day of the publication of the notification.
16. Representations may be made to: Christina Spyrelli, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA (telephone: 020 7783 4312, e-mail: christina.spyrelli@ofcom.org.uk) by not later than **21 January 2004**.
17. All confidential information should be clearly marked as such and separated out into a confidential annex. All representations received by Ofcom, with the exception of material marked confidential, will be published and made available for inspection in Ofcom's Knowledge Centre. Please contact Jan Kacperek on 020 79813790 or by e-mail at jan.kacperek@ofcom.org.uk for further information with respect to public inspection.