

**Confirmation Decision in respect to a Contravention of
General Condition 17.13 of the General Conditions of Entitlement
issued under section 96C of the
Communications Act 2003**

**Confirmation Decision issued by the Office of Communications (“Ofcom”) to
Broadcast Telecom Limited (“Broadcast Telecom”), a company registered in the UK
whose registered company number is 06996222**

Background

1. Under section 96C of the Communications Act 2003 (the “Act”), Ofcom may issue a decision (a “Confirmation Decision”) confirming the imposition of requirements on a person where: (i) that person has been given a Notification under section 96A of the Act; (ii) Ofcom have allowed that person an opportunity to make representations about the matters notified; and (iii) the period allowed for the making of representations has expired. Ofcom may give a Confirmation Decision to a person if, having considered any representations, we are satisfied that the person has, in one or more of the respects notified, been in contravention of a condition specified in the Notification under section 96A.
2. Section 45(1) of the Act gives Ofcom power to set conditions, including general conditions which are binding on the person to whom they are applied. A general condition is a condition which contains the provisions authorised or required by (amongst others) section 58 of the Act.
3. The Schedule to a Notification issued by the Director General of Telecommunications on 22 July 2003 under section 48(1) of the Act, which took effect from 25 July 2003, sets out the General Conditions of Entitlement (the “General Conditions” or “GCs”) which apply to all Communications Providers (“CPs”) defined in each GC. The GCs have, from time to time, been amended¹.
4. GC 17.13 is a general condition which has been set by Ofcom under section 58 of the Act. GC 17.13 relates to the charges which Ofcom may impose on CPs with respect to allocations of Specified Geographic Numbers².
5. GC 17.13 requires that:

“The Communications Provider shall pay to Ofcom any applicable Annual Number Charge within 14 days of receipt of an invoice from Ofcom.”
6. The Annual Number Charge is a charge invoiced by Ofcom to a CP in respect of a Charging Year and is calculated in accordance with GC 17.15³. The Charging Year

¹ A consolidated version of the General Conditions as at 28 May 2015 is located on the Ofcom website at <http://stakeholders.ofcom.org.uk/telecoms/ga-scheme/general-conditions/>.

² As defined in GC 17.33(w) of the General Conditions.

³ GC 17.33(d) of the General Conditions.

means the 12 month period beginning on 1 April and ending on 31 March (excluding 29 February in any leap year) and the first Charging Year shall be 1 April 2013 to 31 March 2014.

7. Under GC 17.14, the Annual Number Charge will be billed annually in arrears following the end of each Charging Year.
8. Broadcast Telecom holds [X] Specified Geographic Numbers, allocated to it by Ofcom, and is a Communications Provider for the purposes of GC 17.13. A schedule identifying the Specified Geographic Numbers which have been allocated to Broadcast Telecom is attached at Confirmation Decision Annex 1 to this Notification.⁴

Notification given by Ofcom to Broadcast Telecom under section 96A of the Act

9. On 3 February 2016, Ofcom issued a Notification under section 96A of the Act ("the Notification") to Broadcast Telecom, stating that Ofcom had reasonable grounds for believing that Broadcast Telecom had contravened, and continued to contravene, GC 17.13 in that it had failed to pay Ofcom the applicable Annual Number Charge imposed on it for the 2013/14 and 2014/15 Charging Years in accordance with that GC.
10. The Notification set out the step that Broadcast Telecom should take in order to comply with the requirements of GC 17.13 and to remedy the consequences of the contravention, namely to pay Ofcom the invoice sum of £[X] forthwith and, in any event, no later than 2 March 2016. Broadcast Telecom was given 14 days in which to make written representations to Ofcom about the matters set out in the Notification (i.e. until 5pm on 17 February 2016) ("the Deadline"). A copy of the Notification is attached at Confirmation Decision Annex 2.
11. The Notification was sent by special delivery on 3 February 2016 to Broadcast Telecom's registered office, 7 Henrietta Street, Covent Garden, London, WC2E 8PS. The Notification was returned to Ofcom by Royal Mail marked "addressee gone away" on 5 February 2016. However, service was valid under section 394 of the Act as the Notification was sent by post to Broadcast Telecom's address as registered with Companies House. Ofcom considers, notwithstanding that the Notification was returned, sending by post to the address registered by Broadcast Telecom itself for the receipt of such notices constitutes allowing sufficient opportunity to make representations. .
12. Broadcast Telecom did not provide Ofcom with any written representations by the Deadline, nor has it paid Ofcom the invoice sum of £[X] in relation to the Annual Number Charge imposed on it for the 2013/14 and 2014/15 Charging Years.

⁴ It should be noted that Annex 1 of the s96A Notification listed all number blocks (geographic and non-geographic) allocated to by Broadcast Telecom rather than being limited to the [X] number blocks associated with Specified Geographic Numbers allocated to Broadcast Telecom. Annex 1 of this s96C Notification includes only the relevant blocks.

13. Broadcast Telecom continues to retain the allocation of Specified Geographic Numbers for which the Annual Number Charges for the 2013/14 and 2014/15 Charging Years were imposed. Despite Ofcom's repeated attempts to secure payment from Broadcast Telecom of this Annual Number Charge, and despite Ofcom issuing the Notification to Broadcast Telecom, Broadcast Telecom has failed to respond and/or make such payment. On this basis, Ofcom is satisfied that Broadcast Telecom has contravened, and is continuing to contravene, GC 17.13.

Confirmation Decision given by Ofcom to Broadcast Telecom under section 96C of the Act

14. For the reasons set out above, Ofcom confirms the imposition of requirements on Broadcast Telecom in accordance with the Notification. This means that, in order to comply with the requirements of GC 17.13 and to remedy the consequences of the contravention, Broadcast Telecom must pay to Ofcom the invoice sum of £[~~0~~] forthwith, and in any event no later than by 18 March 2016.
15. Broadcast Telecom should be aware that its continuing failure to pay the Annual Number Charge for the 2013/14 and 2014/15 Charging Years may result in Ofcom seeking to recover this sum by issuing civil proceedings in the courts and/or considering whether or not to issue a notification under section 61(3) of the Act proposing the withdrawal of the Specified Geographic Numbers which are currently allocated to Broadcast Telecom.

Next steps

16. Broadcast Telecom has until **5.00pm on 18 March 2016** ("the Deadline") to comply with the requirements imposed by this Confirmation Decision.

Interpretation

17. Words or expressions used in this Notification have the same meaning as in the GCs or the Act, except as otherwise stated in this Notification.

Brian Potterill
Director of Competition Policy

4 March 2016