

Direction under Section 106(3) of the Communications Act 2003 revoking a direction applying the Electronic Communications Code in the case of Broadnet UK Limited

A Notification of this proposal was published on 15 October 2009

Whereas:

- A. On 2 March 2001, the Secretary of State granted Broadnet UK Limited a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Broadnet UK Limited to run a telecommunication system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to Broadnet UK Limited;
- B. By virtue of section 106 of the Act, which came into force on 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Communications Act 2003 (the 'Act');
- C. By virtue of paragraph 17 of Schedule 18 to the Act, Broadnet UK Limited is treated after 25 July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act;
- D. Ofcom have received an application from Broadnet UK Limited dated 7 October 2009 for the revocation of the Deemed Direction in accordance with section 115(2) of the Act;
- E. On 15 October 2009, Ofcom published a notification of their proposal to revoke the Deemed Direction by way of a further Direction under section 106 in accordance with sections 107 and 115 of the Act;
- F. Ofcom did not receive any representations about their proposal;
- G. For the reasons set out in the explanatory statement accompanying this Direction, Ofcom are satisfied that in making this Direction they have acted in accordance with their relevant duties set out in sections 3 and 4 of the Act;

NOW, therefore, pursuant to section 106 of the Act, Ofcom make the following Direction-

1. The direction applying the electronic communications code to Broadnet UK Limited under section 106(3) of the Act by virtue of paragraph 17 of Schedule 18 to the Act shall be revoked.

Definitions and Interpretation

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

"Act" means the Communications Act 2003;

"Broadnet UK Limited" means Broadnet UK Limited (registered company number 04055730); and

"Ofcom" means the Office of Communications.

4. 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.

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

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

Gareth Davies
Competition Policy Director

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

25 November 2009

Explanatory Statement

1.1 On 28 January 2002, the Secretary of State granted Broadnet UK Limited a licence under section 7 of the Telecommunications Act 1984 (the '1984 Act') authorising Broadnet UK Limited to run a telecommunications system (as defined in the 1984 Act) and applying the telecommunications code (as set out in Schedule 2 to the 1984 Act) to Broadnet UK Limited.

1.2 Following a change in the regime for electronic communications after 25 July 2003, the telecommunications code is now known as the electronic communications code (the 'Code'), which is set out in Schedule 2 to the 1984 Act as amended by Schedule 3 to the Communications Act 2003 (the 'Act').

1.3 The Code applied to Broadnet UK Limited post-25 July 2003 by virtue of paragraph 17 of Schedule 18 to the Act, under which Broadnet UK Limited is treated after 25th July 2003 as a person in whose case the Code applies by virtue of a direction (the 'Deemed Direction') under section 106(3) of the Act.

1.4 On 7 October 2009, Broadnet UK Limited made an application for the revocation of its Code powers under section 115(2) of the Act and Ofcom is now proposing to revoke the Deemed Direction.

1.5 On 15 October 2009, Ofcom published a draft Direction proposing to revoke the Code in Broadnet UK Limited's case. Comments were sought by 16 November 2009. No comments were received.

1.6 Broadnet UK Limited's application explained that it had not used Code powers in the last five years and possibly beforehand and did not need the powers provided for by the Code going forward.

1.7 In considering Broadnet UK Limited's application, Ofcom considers that it has acted in accordance with its relevant duties set out in sections 3 and 4 of the Act in particular its duty to further the interests of citizens in relation to communications matters and to promote the interests of all persons who are citizens of the European Union. Ofcom does not believe that the revocation of Code powers in this case is contrary to its duties set out in the Act and will not prove to be detrimental to the interests of citizens in relation to communications matters. Broadnet UK Limited is not running a network under which it would need Code powers.

1.8 For these reasons, Ofcom believes that it is now appropriate to revoke the Deemed Direction as requested by Broadnet UK Limited. Thereafter, amongst other things, Broadnet UK Limited would not be permitted to benefit from certain exemptions under Town and Country Planning legislation¹ and nor would it be able to carry out works in connection with the installation of apparatus in the streets without the need to obtain a street works licence under the New Roads and Street Works Act 1991.

¹ See Part 24 of the Town and Country Planning, England and Wales (General Permitted Development) Order 1995. SI 1995/418 as amended. Planning (General Development) (Amendment) Order (Northern Ireland) 2003 SR No. 98. Town and Country Planning (General Permitted Development) (Scotland) Amendment (No. 2) Order 2001 SSI 2001/266.