

CONSULTATION LETTER SENT TO ALL HOLDERS OF COMMERCIAL ADDITIONAL SERVICE LICENCES ON 19 SEPTEMBER 2003

Copies of the “marked-up” version of the proposed CATS licence referred to in this letter are available by request. Please email simon.collison@itc.org.uk

Commercial Additional Services Licence

A. Consultation on Amendments proposed to be made to your Commercial Additional Services Licence

1. As a result of the entry into force of the relevant provisions of the Communications Act (the “Act”), your current commercial additional services (“CAS”) licence will be varied. Further to this variation, your licence will be called a commercial additional television services (“CATS”) licence.
2. In accordance with its duty under Section 3(4) of the Broadcasting Act 1990 (the “1990 Act”), Ofcom intends to vary your licence by means of a notice of variation. In particular, it is proposed that the notice of variation will replace the Schedule of Conditions to your existing licence with a new Schedule of Conditions. The proposed amendments reflect changes to the regulatory regime brought about by the Act¹ and, so far as is possible within the provisions of the regulatory regime, attempt to ensure consistency across all classes of Ofcom licences, both for television and radio services. Overall, the proposed amendments will result in your licence to all intents and purposes being the same as the standard form CATS licence which Ofcom will issue to all new CATS licensees. The notice of variation, which will be issued upon the completion of the consultation process, will come into effect on the date of commencement of the relevant statutory provisions (expected to be 29 December 2003), from which date you will have to comply with the terms and conditions of your licence as amended by the notice of variation.
3. Under Condition 20 of your current licence, and in accordance with Section 3(4) of the 1990 Act, your licence cannot be varied unless you have been given a reasonable opportunity to make representations concerning the proposed variations. You will find enclosed with this letter a copy of the Schedule of Conditions to your varied CAS licence, both in ‘clean’ form and in ‘marked-up’ form showing changes from the current CAS licence. Please submit any representations you may have on the amendments to be made to your licence to Peter Bourton by 27 October 2003. We will consider all representations received from licensees prior to finalising the variation of the CAS licence.
4. You will find below a description of some of the amendments (including deletions) that Ofcom proposes to make to your licence by the notice of variation (as described above at paragraph 2, the Schedule to the notice of variation will be identical to the Schedule to the standard form CATS licence). Please note that this description is only illustrative and is not exhaustive: it is only an indication of certain amendments which may affect your current rights and obligations. The fact that a provision has been crossed out in the ‘marked-up’ form of the varied CAS licence does not necessarily mean it has been omitted, as it may be found elsewhere in the varied CAS licence (see for example paragraph 25 below). Furthermore the fact that a provision has been deleted does not necessarily mean it is no longer enforceable. It may still be enforceable under another licence condition or by other means such as a code of practice. It is your responsibility to read the varied CAS licence carefully, and take appropriate legal advice, if necessary, to determine how your licence, as amended by the proposed notice of variation, would affect your business.

¹ A copy of the Act can be downloaded from www.legislation.hmso.gov.uk or purchased from The Stationery Office Ltd (TSO).

5. You should bear in mind when making representations about the proposed amendments that Ofcom is obliged by the Act to make certain amendments to your licence. Representations are therefore sought on areas where Ofcom will be able to exercise some discretion in its interpretation of the statutory provisions and the incorporation of those provisions in the licence.

B. General and/or Minor Amendments to your Licence

6. Ofcom proposes to make certain general and/or minor amendments to your licence. For example, as a result of the entry into force of the relevant provisions of the Act, references to the Independent Television Commission and the Broadcasting Standards Commission will be replaced by references to Ofcom. To ensure consistency with all classes of licence granted by Ofcom, the order and headings of some of the conditions in your licence will be changed and some minor variations will be made to the text of some of the conditions.

C. Main Proposed Amendments to your Licence Conditions

Deregulation and Contracting Out Act 1994

7. The Act (Section 1(7)) allows the functions conferred on Ofcom to be contracted out under the Deregulation and Contracting Out Act 1994. It is proposed that your licence be amended to include a reference to this in Condition 1(6), so that in the event of an Order under the Deregulation and Contracting Out Act 1994 authorising a person to exercise any functions of Ofcom, relevant references in the licence to Ofcom would include a reference to that person.

Provision of additional television services by the Licensee

8. *Current CAS licence Condition 2; varied CAS licence Condition 2*

The only change which is proposed to this Condition is the deletion of the current provisions specifically dealing with any substitution, deletion or addition to any of the stations from which the service is broadcast. Ofcom's power to make such changes, after due consultation with the licensee, is already covered in Condition 22 of the varied CAS licence.

Fees

9. *Current CAS licence Condition 3; varied CAS licence Condition 3*

Note that it is proposed that the wording of this Condition be amended to facilitate Ofcom's use of its discretion to alter present arrangements.

Additional payments

10. *Current CAS licence Condition 4; varied CAS licence Condition 4*

V.A.T.

11. *Current CAS licence Condition 5; varied CAS licence Condition 5*

No changes are proposed to the provisions on V.A.T.. You should note that V.A.T. is not currently chargeable on licence fees. Provisions on interest on late payments may now be found in Condition 26 of the varied CAS licence. Note that in the proposed Condition the interest rate, at three per cent, has not changed (although the reference bank has).

Programme, advertising and sponsorship standards and requirements

12. *Current CAS licence Condition 6; varied CAS licence Condition 6*

Current CAS licence Condition 7; varied CAS licence Condition 7

As a result of the entry into force of the relevant provisions of the Act, new conditions in relation to general standards and requirements and advertising and sponsorship standards and requirements are proposed to replace your existing licence conditions. Note that some of obligations are limited to the extent that the CAS services which you provide are teletext services. Under these proposed Conditions you would need to comply with a number of general standards and specific advertising and sponsorship standards and observe the provisions of the Standards Code (as defined in the varied CAS licence).

In particular, you should note Condition 6(1)(h) of the varied CAS licence which would require you to ensure that the inclusion of advertising which may be misleading, harmful or offensive is prevented. In addition, you should note Condition 7(3) of the varied CAS licence which describes what would be considered 'political' in the context of advertising and sponsorship requirements and Condition 7(6) of the varied CAS licence which would require you to observe the Ofcom code on premium rate services (or, in the absence of such a code, the terms of any order made by Ofcom under Section 122 of the Act).

Finally, you should note that a similar provision to Condition 7(4) of the current CAS licence (arrangements to enable the Commission to preview advertisements) is included in the varied CAS licence in Condition 17(2)(d).

Provision of information

13. *Current CAS licence Condition 8; varied CAS licence Conditions 3, 8, 9 and 10*

It is proposed that the existing Condition 8 be largely replaced in the varied CAS licence by Condition 9 (general information) and Condition 10 (information relating to a change of control). The requirement to provide Ofcom with information as it may require for the purpose of exercising its functions under the Broadcasting Acts would be extended by reference to the Act.

In addition to your current information obligations, you would be required to inform Ofcom if you, or your parent company, suffered an insolvency-type event or if you, or any individual having control over you (as defined in that Condition), were sentenced to a term of imprisonment on conviction of a criminal offence. The requirements for the supply of specific corporate information documents would be replaced by a requirement for a declaration to be provided at such intervals as Ofcom may determine. In addition, the requirement to provide statements of qualifying revenue at monthly intervals and also in respect of each entire accounting period would be included in Condition 9 of the varied CAS licence.

The requirement to provide details of advertisements (Condition (8)(5)(d) of the current CAS licence) may now be found in Condition 7(8) of the varied CAS licence.

As concerns change of control, you would have an additional obligation to notify Ofcom of proposed changes in control. In addition, it is proposed that the thresholds at which a change in control must be notified be changed to reflect the relevant provisions of the Act.

Condition 8 of the varied CAS licence would make provision for the retention and production of recordings. Note the new requirement in proposed Condition 8(1) to adopt procedures acceptable to Ofcom: (i) for the retention of recordings of any programme which is the subject of a Standards Complaint and (ii) in relation to the production of recordings of any programme which is the

subject of a fairness complaint (see also Condition 19 of the varied CAS licence). Note further in this regard the requirements of Condition 18(2) of the varied CAS licence.

Information required for the purposes of determining or revising tariffs is dealt with in Condition 3 of the varied CAS licence.

Renewal of the licence

14. *Current CAS licence Condition 9; varied CAS licence Condition 11*

As a result of the entry into force of the relevant provisions of the Act, a number of variations are proposed to be made to this Condition.

You should note that the timing of any application for renewal which you may make would be subject to the provisions of paragraph 50 of Schedule 18 to the Act.

Condition 11(4)(c) is proposed to be added. In addition, Renewal Payments would be set by reference to a Cash Bid under Section 50(3) of the 1990 Act rather than by reference to amounts payable under Section 52(1)(a) of the 1990 Act (see Condition 11(5) of the varied CAS licence).

Fair and effective competition

15. *Current CAS licence Condition 10; varied CAS licence Condition 12*

Minor amendments are proposed to Condition 10 of your licence. The amendments do not extend your obligations under the current Condition.

Compliance with ownership restrictions

16. *Current CAS licence Condition 11; varied CAS licence Condition 13*

Note that Condition 13 of the varied CAS licence would add a duty to inform Ofcom of any circumstances which might give rise to a breach of the licensee's obligations thereunder.

You will also note that it is proposed to include references to Schedule 14 to the Act in Condition 13 of the varied CAS licence (and in other appropriate parts of the licence). Further to Section 348(2) and (3) of the Act, religious bodies are currently disqualified from holding the CATS licence and therefore Schedule 14 currently does not apply to CATS licences. However, should these provisions be modified by the Secretary of State (see Section 348(5) of the Act) then Part 4 of Schedule 14 to the Act would apply to the ownership of CATS licences. It is with this contingency in mind that references have been included.

Interference with other transmissions

17. *Current CAS licence Condition 12; varied CAS licence Condition 14*

Transferability of the Licence

18. *Current CAS licence Condition 13; varied CAS licence Condition 15*

Compliance

19. *Current CAS licence Condition 14; varied CAS licence Condition 16*

The requirements to adopt procedures to ensure compliance are proposed to be extended to include those relating to advance clearance of advertisements. The existing requirement to supply Ofcom with details of the procedures so adopted would be incorporated in Condition 16(3) of the varied CAS licence (see Condition 8(7) of the current CAS licence). Condition 16 of the varied CAS licence would also reflect your duty to comply with relevant international obligations.

Government directions and representations

20. *Current CAS licence Condition 15; varied CAS licence Condition 17*

Provision of spare capacity to the Commission

21. *Current CAS licence Condition 16; varied CAS licence Condition 20*

Please see paragraph 24 below.

Standards Complaints

22. *Current CAS licence Condition 17; varied CAS licence Condition 18*

As a result of the entry into force of the relevant provisions of the Act, it is proposed that Condition 17 (Complaints) of your licence be replaced with a new condition in relation to standards complaints. Although not yet finalised, work is currently underway to establish co-regulatory mechanisms for handling advertising standards complaints. This may involve an Order being made under the Deregulation and Contracting Out Act 1994 (see paragraph 7 above).

Fairness and privacy complaints

23. *Current CAS licence Condition 18; varied CAS licence Condition 19*

As a result of the entry into force of the relevant provisions of the Act, Ofcom will be the body responsible for exercising functions relating to the consideration of fairness and privacy complaints which are presently exercised by the Broadcasting Standards Commission. Accordingly, your licence will be amended to include, for example, an obligation to comply with certain information requests from Ofcom and to observe the Fairness Code (as defined in the varied CAS licence).

New condition on Publicising Ofcom's functions

24. *Varied CAS licence Condition 20*

Please note that the obligation contained in Condition 16 of your current licence to provide spare capacity to the Commission would be retained by way of the more general requirement set out in proposed Condition 20, reflecting the requirements of Section 328 of the Act.

Power of Ofcom to vary licence conditions

25. *Current CAS licence Condition 20; varied CAS licence Condition 22*

Notices and Service

26. *Current CAS licence Condition 21; varied CAS licence Condition 23*

Note that under the varied CAS licence, notices could be served or given in electronic form (see Condition 23(4) of the varied CAS licence).

New condition on equal opportunities and training

27. *Varied CAS licence Condition 24*

As a result of the entry into force of the relevant provisions of the Act, it is proposed to include a new condition in relation to equal opportunities and training in your licence. For example, companies which, individually, have over twenty employees or are part of a group having in aggregate over twenty employees, would be expected to make arrangements to promote, in relation to employment with the licence holder, the equalisation of opportunities for disabled persons.

Sanctions for breach of licence conditions

28. *Current CAS licence Condition 23; varied CAS licence Condition 27*

Some amendments have been proposed to this Condition. For example, the maximum amount of the financial penalty that could be imposed by Ofcom for breach of a licence condition would be 5% of qualifying revenue regardless of whether a previous penalty has been imposed (although where a financial penalty relates to a failure to comply occurring before the commencement of paragraph 5(2) of Part 1, Schedule 13 to the Act, the penalty will be imposed in accordance with the amounts specified in your current licence).

You should also note Section 346 of the Act, under which amounts payable or penalties imposed under your licence are recoverable by Ofcom as a debt due and your liability for such amounts is not affected by your licence ceasing to have effect.

Revocation

29. *Current CAS licence Condition 24; varied CAS licence Condition 28*

Some amendments have been proposed to the Revocation Condition of your licence. Conditions 24(3)(c) and (e) of the current CAS licence (see Conditions 28(3)(a) and (c) of the varied CAS licence) would be varied to ensure compliance with any requirements imposed by or under Schedule 14 to the Act. Condition 24(3)(a) (licensee ceases to provide service) of the current CAS licence may now be found at Condition 28(3)(f) of the varied CAS licence. Note also Condition 28(5) of the varied CAS licence which makes your licence consistent with the licences of other Cash Bid licensees. Condition 24(3)(b) of the current CAS licence (licensee agrees in writing that licence should be revoked) has been omitted from the varied CAS licence (but see Condition 28(3)(f)). Finally, Condition 28(3)(g) (service provided does not constitute an additional television service) of the varied CAS is a new provision.

Conditions 24(3)(g) of the current CAS licence (see Condition 28(3)(e) of the varied CAS licence) would be updated by reference to the Act. Condition 24(3)(h) of the current CAS licence (see Condition 28(3)(h) of the varied CAS licence) would be amended in accordance with the relevant provisions of the Act.

D. Annex

30. Paragraph 3 of Part I of the Annex to your current licence (Compliance with the ITC Code for Text Services) would be omitted. Under paragraph 43(1) of Schedule 18 to the Act, the Code for Text Services has effect as if it were the Standards Code (as defined in the varied licence). Compliance with the Standards Code would be provided for under Condition 6 of the varied CAS licence (see paragraph 12 above).

31. References to the ITC and to the Commission in Parts III and IV of the current CAS licence would be replaced by references to Ofcom.
32. Roman numerals (Parts I, II, III, IV and V) in the Annex would be replaced by Arabic numerals (Parts 1,2,3,4 and 5).

Yours faithfully,

Kip Meek
Senior Partner, Content and Competition