

APPENDIX 1.1  
(referred to in paragraph 1.1)

**The reference**

1. On 19 July 1988 the Director General of Telecommunications sent to the Commission the following reference to which was annexed the draft of a new Licence Condition relating to Chatline Services:

The Director General of Telecommunications ('the Director') by virtue of the powers conferred upon him by section 13(1) of the Telecommunications Act 1984 ('the Act') hereby refers to the Monopolies and Mergers Commission ('the Commission') the questions set out below relating to the provision of telecommunication services by British Telecommunications PLC ('BT') under the licence granted to BT under section 7 of the Act on 22 June 1984 ('the Licence').

For the purposes of this reference, terms used shall have the same meaning as they have in the Act or the Licence save where the context otherwise requires.

A. The Commission shall upon this Reference investigate and report on the following questions:

1. Whether the provision by BT of Chatline Services and Message Services ('the Services') by means of its Public Switched Telephone Network (whether or not Messages comprised in such Services have previously been or are subsequently conveyed by any other public telecommunication system) or the provision by BT of a telecommunications service to other persons enabling them to provide the Services by means of that Network (including the provision of any facility for conveying Messages comprised in the Services which have previously been or are subsequently to be conveyed by another public telecommunications system) operates, or may be expected to operate, against the public interest; and
2. if so whether the affects adverse to the public interest which such provision has had or may be expected to have could be remedied or prevented by modifications to the conditions of the Licence.

For the purposes of this Reference:

'Chatline Service' means a service which consists of or includes the enabling of more than two persons ('the Participants') simultaneously to conduct a telephone conversation with one another without either:

- (a) each of them having agreed in advance with each other, or
- (b) one or more of them having agreed in advance with the person providing the facility for such a telephone conversation to be conducted the respective identities of the other intended Participants or the telephone numbers on which they can be called.

'Message Service' means a service which consists of or includes the sending of speech, music or other sounds or signals to any person who obtains access to that service by means of a Public Switched Telephone Network where the consideration for its conveyance includes in practice any amount in respect of what is sent of which is payable to the person providing the service.

'Public Switched Telephone Network' means any public telecommunications system which is used to provide switched voice telephony services to the general public.

B. Pursuant to Section 13(3)(a) of the Act the Director hereby specifies that, in his opinion, an effect adverse to the public interest that the provision of the Services has or may be expected to have is that the manner in which access to those services is provided fails to provide the person who may be legally responsible for meeting any charges incurred as a result of those Services being used or conveyed ('the Customer') with adequate means of control over the use of such Services. In particular:

- (a) the ease of access to the Services enables them to be provided to persons other than the Customer; and
  - (b) the value and quality of the telephone service to the Customer is significantly impaired by the lack of adequate means by which the Customer may exercise control over the types of Services to which access is available by means of the Customer's connection to a Public Switched Telephone Network and over the costs or charges that may be incurred.
- C. Pursuant to Section 13(3)(b) of the Act the Director hereby specifies that in his view these effects adverse to the public interest could be remedied or prevented by modifications to the Licence in the case of Chatline Services, by adding a new Condition, a draft of which is contained in the Annex to the Reference.
- D. The Commission shall report on this reference within the period of six months commencing on the date on which this reference is made.

(signed) BRYAN CARSBURG  
 Director General of Telecommunications  
 19 July 1988

#### DRAFT CHATLINE LICENCE CONDITION

33A.1 The Licensee may only provide a Chatline Service by means of the Applicable Systems if it satisfies the Relevant Conditions in relation to the provision of that service.

33A.2 If the Licensee is satisfied that a person to whom it provides any telecommunication service by means of Applicable Systems is providing a Chatline Service by means of that telecommunication service otherwise than in accordance with the Relevant Conditions and the Licensee is not reasonably satisfied that the person will in future comply with them, then the Licensee shall cease to provide that service to that person.

33A.3 If the Director is satisfied that a person to whom the Licensee provides a telecommunication service by means of the Applicable Systems is providing a Chatline Service by means of that telecommunication service otherwise than in accordance with the Relevant Conditions he may direct the licensee to cease to provide that person with that telecommunication service.

33A.4 In this Condition—

- (a) 'Chatline Service' means, subject to paragraph 5 below, a service which consists of or includes the enabling of more than two persons ('the Participants') simultaneously to conduct a telephone conversation with one another without either
  - (i) each of them having agreed in advance with each other; or
  - (ii) one or more of them having agreed in advance with the person enabling such a telephone conversation to be conducted

the respective identities of the other intended Participants or the telephone numbers on which they can be called, but the Director may determine that a service of any description specified in the determination is not to be treated as a Chatline Service for the purposes of this Condition.

- (b) 'the Relevant Conditions' are that—
  - (i) a Voice Telephony Customer has in advance in writing requested of the provider of the service the provision of a specified Chatline Service; and
  - (ii) any bill or invoice from the Licensee, a Specified Public Telecommunications Operator or a person specified in sub-paragraph (c)(iii) below in respect of the provision of a Chatline Service

(whether by the Licensee or by any other person) shows the amount of the charge for that service (including any charge in respect of the telephone calls by means of which the service was provided) separately from the charge for any other service and each such charge is identified by the date on which the service was provided and the number used to obtain access to that service.

(c) 'Voice Telephony Customer' means a customer of:

- (i) the Licensee;
- (ii) a Specified Public Telecommunications Operator; or
- (iii) a service provider to whom such a Specified Public Telecommunications Operator provides, by virtue of a condition in its licence, telecommunication services for the sole purposes of resale by that service provider;

for the voice telephony services used by a Participant.

(d) 'Specified Public Telecommunications Operator' means Kingston upon Hull City Council, Kingston Communications (Hull) PLC, Mercury Communications Limited, Racal Vodafone Limited, Telecom Securicor Cellular Radio Limited or any other public telecommunications operator who is specified by the Director as such for the purposes of this Condition and described in a list kept for that purpose by the Director and made available by him for inspection by the general public.

33A.5 A service by which one or more additional persons who are known (by name or telephone number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of the such parties is not on that account a Chatline Service if it would not otherwise be regarded as such a service.

2. On 1 August 1988 the Chairman of the Commission, acting under section 13 of the Telecommunications Act 1984, and paragraphs 10 and 12 of Schedule 3 of the Fair Trading Act 1973, directed that the functions of the Commission in relation to the reference should be discharged through a group consisting of the following members of the Commission:

*KS Carmichael*  
*Miss A M Head*  
*R G Smethurst*

3. He further appointed Mr R G Smethurst, being a member of the group, to act as Chairman of the group.

4. In pursuance of the powers vested in him by section 13 of the Telecommunications Act 1984, the Chairman of the Commission appointed the following additional members to be part of the group:

*Mr D R Fairbairn*  
*Professor J E Flood*

5. A press release about the reference was issued by the Commission on 10 August. In addition advertisements inviting interested parties to submit evidence to the Commission were placed in:

*The Independent*                      *News of the World*  
*The Mail*                                *The Times*  
*The Mirror*

6. In addition we sought evidence and views from Kingston Communications Hull PLC; Mercury Communications Ltd; Racal-Vodafone Ltd; Telecom Securicor Cellular Radio Ltd; the Confederation of British Industry; the Trades Union Congress; the Central Computer and Telecommunications Agency (HM Treasury); the relevant trade associations; and a number of organisations representing consumer and minority groups' interests. We sent a questionnaire to 121 chatlines and message service providers, and received 55 replies. An analysis of these replies is in Appendix 2.1. The views given to us in general are summarised in Chapter 4, and a full list of those who made representations is in Appendix 1.2.

7. We received written submissions from British Telecommunications PLC (BT), and the Office of Telecommunications (OFTEL), and held hearings with both parties. Members of the group and staff also attended a presentation by BT at its London headquarters and staff had a meeting with BTE Spectrum at its offices.

8. We held hearings with Audiotext PLC; the Association of Telephone Information and Entertainment Providers (ATIEP); Mr Bill Heath, Chairman of ATIEP, a member of ICSTIS, and Managing Director of Dial-up Services Ltd; the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS); the Independent Telephone Chatline Association; Megaphone International Ltd; Mercury Communications Ltd and Terry Lewis, MP for Worsley, Manchester. Members and staff also attended presentations at Chatterbox UK Ltd (Leeds); Hagar Business Developments Ltd (Manchester); and Telephone Information Services Ltd (London). Staff also visited the Plastics and Rubber Advisory Service (London).

9. Some of the evidence obtained in the course of our enquiry was of a confidential nature. Our report contains only such information as we consider necessary for an understanding of our conclusions.

10. We should like to place on record our thanks to all those who helped us in our inquiry, and particularly to the representatives of BT.

#### **Statutory background**

11. This is the first reference to be made to the Commission by the Director General of Telecommunications (the Director) under the Telecommunications Act 1984 (the Act). Section 7 of the Act provides that a licence to run a telecommunications system may be granted by the Secretary of State—or by the Director with the authority of the Secretary of State—to all persons, to persons of a class or to a particular person. The licence may authorise the connection of the telecommunication system to other systems and may include such conditions as appear to the Secretary of State (or the Director) to be requisite or expedient having regard to their duties under section 3 of the Act (see paragraph 12 below).

12. A licence under section 7 of the Act was granted to British Telecommunications, then a statutory body, in June 1984, but took effect as if granted to British Telecommunications PLC (BT) when the transfer of that statutory body to BT was effected on 5 August 1984.

13. BT's network is designated as a public telecommunication system under section 9 of the Act and BT is accordingly a public telecommunications operator (PTO). The other PTOs are Kingston Communications (Hull) Ltd, Mercury Communications Ltd, Racal Vodafone Ltd and Telecom Securicor Cellular Radio Ltd (Cellnet). Cellnet is owned as to 60 per cent by BT.

14. Section 3 of the Act imposes on the Secretary of State and the Director a duty to exercise their functions in the manner best calculated to secure that there are provided throughout the United Kingdom, save in so

far as the provision thereof is impracticable or not reasonably practicable, such telecommunication services as satisfy all reasonable demands for them including, in particular, emergency services, public call box services, directory information services, maritime services and services in rural areas (section 3(1)(a)) and, subject to this general duty, the further duties in section 3(2):

- (a) to promote the interests of consumers, purchasers and other users in the United Kingdom (including, in particular, those who are disabled or of pensionable age) in respect of the prices charged for, and the quality and variety of, telecommunication services provided and telecommunication apparatus supplied;
- (b) to maintain and promote effective competition between persons engaged in commercial activities connected with telecommunications in the United Kingdom;
- (c) to promote efficiency and economy on the part of such persons;
- (d) to promote research into and the development and use of new techniques by such persons;
- (e) to encourage major users of telecommunication services whose places of business are outside the United Kingdom to establish places of business in the United Kingdom;
- (f) to promote the provision of international transit services by persons providing telecommunication services in the United Kingdom;
- (g) to enable persons providing telecommunication services in the United Kingdom to compete effectively in the provision of such services outside the United Kingdom; and
- (h) to enable persons producing telecommunication apparatus in the United Kingdom to compete effectively in the supply of such apparatus both in and outside the United Kingdom.

15. Among the functions of the Director under the Act is that of modifying the conditions of licences granted under section 7. He may modify a licence either by agreement (or, in the case of a general or class licence, provided that no objections or representations have been made by the persons authorised under the licence, or if they have been made, are withdrawn) (section 12) or following a reference to the Commission (section 13). Under such a reference the Director shall require the Commission to report on whether any matters which relate to the provision of telecommunication services or the supply of telecommunication apparatus by a person licenced under section 7 operate, or may be expected to operate, against the public interest, and if so, whether the effects adverse to the public interest which those matters have or may be expected to have could be remedied or prevented by modifications of the conditions of that licence.

16. In order to assist the Commission, the Director may specify in a reference under section 13 any effects adverse to the public interest which, in his opinion, the matters specified in the reference have, or may be expected to have, and any modifications of the conditions of the licence by which, in his opinion, those effects could be remedied or prevented.

17. In determining on a reference to it under section 13 whether any particular matter operates, or may be expected to operate, against the public interest, the Commission must have regard to the matters as respects which duties are imposed on the Secretary of State and the Director by section 3 of the Act (see paragraph 12 above).

18. Where, on a reference under section 13, the Commission conclude that any of the matters specified in the reference operate, or may be expected to operate, against the public interest and include recommendations as to appropriate modifications of the conditions of the licence to remedy those adverse effects, the Director shall make such modifications to the conditions of the

licence as appear to him necessary to remedy or prevent those adverse effects (section 15). Before making any modifications, the Director must have regard to the modifications specified in the Commission's report which, however, he need not adopt, and must publish the modifications he proposes to make in an appropriate manner and allow at least 28 days for any representations or objections to the modifications to be made.

#### **BT's licence**

19. A number of conditions in BT's licence are of relevance to the current reference. In particular:

- Condition 1 obliges BT to provide to any person who asks for them at any place in the Licensed Area (essentially the United Kingdom except the area around Kingston upon Hull) voice telephony services and other services consisting in the conveyance of messages, by means of its network.
- Condition 14 effectively obliges BT to connect, or permit the connection of, a customer's system to its network, provided the system consists of apparatus approved under the provisions of the Act for that connection.
- Condition 15 obliges BT to permit other persons to provide services over its network.
- Condition 16 obliges BT to publish its tariffs and other terms and conditions for, *inter alia*, the provision of telecommunication services by means of its network in accordance with an obligation under the licence and to adhere to those published tariffs and other terms and conditions.
- Condition 17 prohibits BT from unduly preferring, or discriminating against, persons or classes of persons as respects, *inter alia*, the provision by means of the network of a telecommunication service in accordance with an obligation under the licence.
- Condition 38 requires BT to take all reasonable steps to ensure that its employees engaged in the 'Systems Business' observe the provisions of a Code of Practice made under the condition. The Code prohibits, with certain exceptions, the disclosure of customer information held by the Systems Business outside that Business without customer consent.

**Organisations and individuals that submitted evidence**

The following organisations and individuals submitted written evidence to the Commission. Representation at hearings or meetings is indicated by a single asterisk and a double asterisk respectively.

Advisory Committee on Telecommunications for Small Businesses  
 Age Concern  
 Association of Telephone Information and Entertainment Providers (ATIEP)\*  
 Audiotext PLC\*  
 Bounty Services Ltd  
 British Approvals Board for Telecommunications (BABT)  
 British Telecommunications PLC\*  
 Broadsystem Ltd  
 BTE Spectrum\*\*  
 Care Trust and Campaigns  
 Chatterbox UK Ltd\*  
 Cleveland County Council and Liverpool City Council Trading Standards  
 Departments  
 Communication Managers Association  
 Computerdial Ltd\*  
 Dial-Up Services Ltd\*  
 Financial Times Business Information Ltd  
 Hagar Business Developments Ltd\*  
 Independent Committee for the Supervision of Standards of Telephone  
 Information Services (ICSTIS)\*  
 Independent Telephone Chatline Association (ITCA)\*  
 Kingston Communications (Hull) PLC  
 Lambeth Directorate of Environmental Health and Consumer Services  
 Legion Telecommunications Ltd  
 Leo Information Ltd  
 Terry Lewis, MP for Worsley, Manchester  
 Lucky Publications Ltd  
 Megaphone International Ltd\*  
 Mercury Communications Ltd\*  
 Mercury Premium Services  
 Milton Firman (Rycrave Ltd/Tudorbead Ltd/Datazeal Ltd/First Change  
 Ltd/Globut Ltd)  
 National Communications Union  
 National Consumer Council\*  
 J W Nijholt (UK) Ltd  
 Normart Promotions  
 Office of Telecommunications (OFTEL)\*  
 Phonographic Performance Ltd  
 Plastics and Rubber Advisory Service\*\*  
 Professional Sporting Bureau Ltd  
 Royal National Institute for the Blind (RNIB)  
 Society of Telecom Executives  
 Space City Music  
 Telecommunication Engineering and Manufacturing Ltd (TEMA)  
 Telephone Dating Ltd  
 Telephone Information Services Ltd\*  
 Telsis Ltd  
 Time Out Publications Ltd  
 Union of Communication Workers  
 Some 82 members of the public

*(referred to in paragraph 2.65)***Survey of service providers****Coverage**

1. 121 questionnaires were sent out—Names of service providers (SPs) were obtained from BT which has a comprehensive list of all SPs. Of the 121, 22 were found to be 'out of scope' (2 not yet trading, 8 discontinued trading, 12 not contactable). Of the 99 remaining in scope we received 55 returned questionnaires, a 56 per cent response rate. We know, from BT's records of revenue earned, that we had returns from 16 out of the 21 largest SPs (those earning net revenue of £250,000 or more in the first quarter of 1988). We estimate that these 16 firms received about 30 million calls in the first quarter of 1988, about 73 per cent of total calls to SPs.

2. Questions in the questionnaire covered the types of service provided, number of calls made, numbers and types of callers, revenue and costs, numbers of employees and, in the case of chatline providers, a question on measures taken to control the content of conversations and to advise callers on the cost of the call. We summarise the results below.

**Types of services**

3. Ten of the SPs replying to the survey provided chatline services, seven provided one-on-one services and 45 provided message services. Seven firms provided more than one type of service. Of the 45 SPs providing message services, 20 said that they would describe some of their messages as entertainment, and 40 said that they would describe some of their messages as information. A number of others classified some of their messages as 'other than entertainment or information'; these included televoting, marketing, dating, a radio-line and computer games.

**Number of calls made and number of customers in last 12 months**

4. Thirty-six SPs answered this question (BT provided us with a number for the total calls—111 million in 1987/88). The 36 SPs are classified below according to the number of calls received:

10 million or over	4
5 million—10 million	2
1 million—5 million	7
100,000—1 million	15
Less than 100,000	8

Estimates of the number of customers were given by 16 SPs. These ranged from 1,200 to 4 million. These estimates were based on subjective judgment since data on calls are not organised in such a way as to record information on individual customers of each SP.

**Revenue, costs and profitability**

5. Forty firms gave figures for their annual revenue, and 35 of these also gave figures for their annual costs. The distribution of firms by revenue was as follows:

£5 million or over	2
£1 million—£5 million	8
£100,000—£1 million	16
£10,000—£100,000	10
Less than £10,000	4

We were able to obtain fuller information on revenues earned by SPs from BT (see paragraph 2.67). The data on costs needed to be treated with care because some firms which had started in the last year were including start-up capital costs whereas others were not. In the top ten revenue earners eight had revenue greater than costs. Of these, two firms had a noticeably high ratio of revenue to costs

(of over 3:1). These were both chatline operators. of the remaining 25 firms giving cost information, eight had revenue less than costs, although some of these had clearly just started operation and had included start-up costs in their figures. On the basis of the figures given, for those firms reporting a surplus of revenue over costs, the average surplus expressed as a percentage of revenue was 26 per cent. However, because of the inconsistency in the data on costs we do not think our survey results can be used to derive an estimate for the overall profitability of the industry.

#### **Employment**

6. Aggregating the replies to our question on employment gave figures of 691 full-time and 253 part-time.

#### **Expansion plans**

7. In answer to the question of whether they planned to expand services, 41 firms answered yes, 4 answered no and 6 were undecided.

#### **Chatline operators: advice of call costs and monitoring**

8. Of the ten chatline operators, eight stated that they advised callers of the cost of calls either through an introductory recorded message or through the monitors. Three of the chatline operators are in ITCA whose voluntary code of practice is described at paragraph 2.69.

9. All the chatline operators monitored the chatline calls. It was not clear from replies how many exercised constant monitoring as compared with sample monitoring.



# STATEMENT

## CHATLINES AND OTHER MESSAGE SERVICES

### A statement issued by the Director General of Telecommunications

I have been monitoring experience with Chatline Services and Message Services particularly closely since the early part of 1986 and I expressed concern about these services in my Annual Reports for 1986 and 1987. A number of measures were taken during this period in an attempt to limit the undesirable features of some of these services. However, towards the end of 1987, I became aware that problems were continuing to be experienced with Chatline Services and I commenced a thorough investigation of these services. This led to my publication in February 1988 of a statement about British Telecom's (BT's) Chatline Service – which was called 'Talkabout' – and about similar services operated by other service providers over BT's network.

In that statement, I called for the imposition of controls on the provision of Chatline Services, to put the suppliers under an obligation to ensure that the services were provided only to customers who had actively requested their provision on exchange lines for which they were responsible for paying the bill and only where itemised billing could be provided. BT subsequently announced the suspension of its Talkabout service, saying that its provision would be uneconomic if these conditions had to be met.

However, the provision of Chatline Services by non-BT suppliers continued and I began proceedings to seek the imposition of restrictions formally on all suppliers. Because these services could be provided only over networks operated by the public telecommunications operators and because they were being provided under contracts under which BT was collecting revenues on behalf of the service providers, I thought it fair that such

restrictions should be imposed through controls on BT and other public telecommunications operators and through amendment of their licences. I therefore developed a proposed licence amendment in consultation with the five operators concerned – BT, Mercury Communications Limited, Kingston Communications (Hull) Limited and the two cellular radio telephone companies – and I reached provisional agreement with all of these companies about the broad form of the licence amendment that would be acceptable to them.

When I wish to make a licence amendment by agreement, I have to publish notice of my intention and allow a period of twenty-eight days during which representations can be made to me. I published notice of my proposed amendment in mid-May and I received a number of representations which I considered carefully. I nevertheless held to the view that the licence amendment was desirable. However, at this point, BT informed me that it would not be able to give formal agreement to the licence amendment as it had originally intended because of its commitments to service providers, which are legally binding.

The alternative procedure by which I can make a licence amendment is by making a reference to the Monopolies and Mergers Commission (MMC) and obtaining a finding from them that the subject matter of the reference is operating against the public interest or can be expected to operate against the public interest and that the detriment to the public interest can be alleviated by a licence amendment. A licence amendment made in this way can override BT's contractual commitments. Accordingly I have now referred the problems relating to Chatline Services to the MMC.

## COMPLAINTS ABOUT MESSAGE

### SERVICES

I have also received a large number of complaints about Message Services. These services are normally provided over the same network using the same facilities as Chatline Services and customers are charged under the same tariff. Because of the volume of complaints and because of the common method of service provision, I have included Message Services in the reference to the MMC.

Message Services cover a wide variety of services. Access to the services is obtained by telephoning a special number – often with the prefix 0898. The largest number of services involves playing a recorded message. The content of the recorded messages can be regarded as falling into two categories. The first, Information Messages, includes such services as specialised weather reports for mountain areas, travel information, stock market price information, results of sporting fixtures, and information about health. The second category, Entertainment Messages, includes music, children's stories, jokes and other types of entertainment. Some message services involve playing interactive games: these can conveniently be classified with Entertainment Messages.

I have regarded Chatline Services as services which involve group conversations among three or more people. A variation is the 'One-on-One Chatline' which may be used for giving serious advice but is also used for Entertainment purposes. The One-on-One Chatline Service is distinguishable from ordinary voice telephone conversations only by the fact that the customer pays a premium charge for the service and part of the charge is passed on to the service provider.

All of the services considered in this statement – Chatline Services, One-on-One Services, Information Services and Entertainment Services are provided at a premium rate of charge and normally at the rate known as 'm' rate, which amounts to about 38p per minute at peak rate and standard rate or 25p per minute at cheap rate on private exchange lines.

The complaints that I have received have covered various aspects of the services. Some complainants have claimed that the cost of the services is excessive. Some have complained that the content of the messages or of the conversations is objectionable – for example, some have been characterised as 'soft pornography' while others have been said to be unacceptable on other grounds; and some have complained that the advertising of some services is misleading, typically because the advertisement suggests a pornographic service which is not actually delivered.

The level of the charge for the service has to be considered as a possible abuse of monopoly power,

and I shall discuss this aspect of the situation further below. However, another issue which is affected by cost, and about which specific complaints have been made to me, concerns the fact that many telephone calls to recorded message services are made at somebody else's expense. Employees often telephone at their employers' expense; and children and others often telephone at the expense of their parents or other domestic customers who are responsible for payment of telephone bills. All telephony involves a risk of this kind – ordinary telephone calls are often made at somebody else's expense – but some complainants argue that the fact that some abuse can take place with the telephone system does not justify extending the potential for abuse by allowing recorded message and related services, which are particularly likely to cause this kind of problem. Employers complain that they either have to incur the expense of incorporating call barring facilities in their private branch exchanges or carry the risk of unauthorised use of the telephone by employees; and residential customers complain that barring facilities are not yet effectively available to them so that they have to carry the risk.

### THE CASE FOR A BAN

I turn now to a discussion of the remedies available to limit the difficulties which are attributed to Chatline Services and Message Services. The first possibility is that services should be prohibited. This would be a very severe course of action, given that many services have a clear positive value, most are harmless, and only a few are objectionable. Prohibition would have the disadvantage of inhibiting the development of a market that may yield more innovative and valuable services in the future. On the evidence that I have seen so far, I do not believe that a total ban would be in the interests of customers.

### CONTRACTING IN

A second possible remedy would be to require services to be provided only to customers who have signed a request for the services to be available on their exchange lines. This condition could be met in various ways. Customers could have a direct commercial relationship with the service provider or the restriction could be operated by the telephone company. Customers could be given a personal identification number which they would have to quote to gain access to the service or the operator could have a system for identifying automatically the telephone number of the exchange line on which the call originated.

### CALL BARRING

The second possibility discussed above involves what may be called 'contracting-in'; another

possibility would involve putting the onus on the customer for 'contracting-out'. Both approaches have the merit that they give customers additional control over the way in which their telephone lines – the lines for which they are responsible for paying the bill – are used.

Contracting-out on a telephone network could be implemented with call-barring facilities, either in the customers' apparatus or in the public exchange. Call barring would enable customers to prevent the telephoning of certain numbers over their telephone lines. Since customers would not normally wish to rule out all telephone calls to Message Services – they may wish to be able to make such calls themselves while preventing others from making them – the barring arrangements would be most useful if the customer could use a special procedure to override them.

Call barring arrangements work by setting apparatus to recognise the digits that are dialled in initiating a telephone call and to refrain from completing the call in the case of certain pre-selected numbers or families of numbers. The number of digits recognised by the barrer can vary. For example, the barrer may recognise only one digit, and then the call barring will be rather crude; if the barred digit is an initial zero all direct dialled calls other than local calls will be prohibited. The more digits are included in the recognition process, the more closely call barring can be targetted on the particular numbers that are regarded as objectionable, but the more expensive the apparatus is.

I have sought to encourage the development of call barring apparatus as rapidly as possible and arrangements now exist under which such apparatus can be given type approval for connection to the public switched telephone network. These arrangements are relatively new. BT also can provide call barring facilities at public exchanges when it has new digital equipment in operation.

### ITEMISED BILLING

The provision of itemised billing is likely to alleviate the problems with Message Services very significantly and it will be introduced progressively under operators' present plans. Itemisation will enable people responsible for paying telephone bills to find out when unauthorised use of their telephones is being made to call Message Services and they will then be able to take appropriate action. Mercury Communications and the two cellular radio telephone companies already provide itemised bills; Kingston Communications (Hull) has already introduced this facility for a significant proportion of its customers and plans to complete the process in the near future. BT announced plans for the introduction of itemised billing last year and it expects to have provided such billing to 90% of

customers in London and 50% of customers in the rest of the country by 1990. Most telephone calls to Message Services and Chatline Services are likely to exceed the cost limit of 50p which BT has set for itemisation of individual calls. The speed at which itemised billing can be extended is governed by the replacement of BT's network of exchanges with modern electronic switching equipment and associated computing capacity; I shall be monitoring progress to make sure it is as rapid as reasonably possible.

### DIRECT CONTROL OF MESSAGE

#### CONTENT

Evidence does exist to suggest that the danger that some recorded messages will have an unacceptable content is a real one. If it is concluded that a total ban of all Message Services would not be justified at the present time, it is necessary to distinguish between acceptable messages and unacceptable messages.

At least two sets of procedures exist for preventing the provision of messages with unacceptable content. First, it is an offence under Section 43 of the Telecommunications Act 1984, to send, "by means of a public telecommunications system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character". Although it is for the Courts to decide what constitutes an offence under this provision, it is open to the police, trading standards officers or private individuals to pursue charges.

Secondly, the provisions of the 1984 Act are augmented by the terms of BT's contracts which provide for the termination of any offensive service. When I first began to receive complaints about the content of Recorded Message Services, I agreed with BT that it would not be desirable for either BT or OFTEL to be the judge of the acceptability of the content of recorded messages. The judgement required is that based on 'generally prevailing standards' and this is best made by a committee of independent persons. Accordingly, with my encouragement, BT initiated arrangements for the establishment of such a committee which was named the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS). The Committee began operations in September 1986. It has established a Code of Practice. The Committee considers complaints and BT, under its contracts, can terminate service to the providers of Recorded Messages who are judged by ICSTIS to have broken the Code of Practice. The Committee recommended the withdrawal of several services during 1987 and BT has acted on these recommendations, usually by obtaining undertakings from service providers not to repeat the breaches of the Code. However, BT has also suspended telephone service on at least one occasion.

(referred to in paragraph 3.1)

I believe that the basic concept behind the establishment of the Committee is a good one and that the arrangements are making a contribution to the removal of some of the problems with Recorded Message Services. However, I believe that the arrangements need at least one further improvement. I believe that the Committee should actively review a random sample of both message content and promotional material instead of only responding to complaints as at present. I believe that random monitoring is necessary because one cannot rely on people who telephone the services to complain when they are objectionable. I am assured that the necessary resources will be made available and I am grateful that the Committee has now indicated that it is willing to take this task on.

### APPLICATION OF THE MEASURES FOR CONTROL

I have already given my opinion that Chatline Services should only be provided to customers who have explicitly requested their provision – customers being people who are responsible for paying the bills – and where itemised billing is provided. I believe that these conditions should apply to services provided by public telecommunications operators and to services provided by others. I am aware from BT's decision about Talkabout that the imposition of these restrictions is likely to lead to a cessation of Chatline Services – at least until modern technology is more widely available. I believe that this is an acceptable outcome in terms of my duty to promote the interests of all users of telephone services. I am therefore asking the MMC whether or not it would support the imposition of these restrictions.

I do not believe that the imposition of similar restrictions on all Recorded Message Services would be justifiable at the present time. This, presumably, would lead to the termination of such Recorded Message Services and this would mean the loss of some services which are valuable and the loss of potential for future development. I therefore believe that a decision for action at the present time must rest among three possible courses:

**1** A requirement that Information Services should be separated from Entertainment Services, with distinctive families of numbers to facilitate the barring of calls to one group of services but not the other. This could be allied to a requirement for the operators to provide call barring facilities at a reasonable price in relation to cost as soon as it is technically and economically feasible. Separation of Information Services from Entertainment Services would involve some difficulties of definition and one of the issues is whether or not such separation could be undertaken with reasonable fairness.

**2** Classification of Information Services into

Entertainment Services and Information Services with a requirement that Entertainment Services – which can be the cause of big bills payable by people who have not made the telephone calls – having to meet conditions for 'contracting-in' and itemised billing.

**3** No requirements to separate Information Services from Entertainment Services but a requirement for the telephone company to introduce call barring facilities as soon as it is technically and economically feasible.

I am asking the MMC which of these possibilities, if any, it believes should be adopted.

Whatever decision is made about these possibilities, I believe that the arrangements for control of content, under the supervision of ICSTIS, should be continued. I also believe that it is highly desirable that ICSTIS should undertake the random monitoring of Recorded Message Services and I hope the MMC will consider whether or not a formal licence requirement should be imposed for such monitoring to give formal effect to the arrangement which has now been agreed informally.

One-on-One Services are difficult to deal with. They do not involve playing a recorded message repeatedly and recording of the live conversations is unlikely to be acceptable. Consequently, the services are difficult to monitor to establish whether or not they are grossly offensive or of an indecent, obscene or menacing character. These services also seem to be more like Chatline Services than Recorded Message Services in that they are open ended and can easily involve the incurring of large bills by people who are not responsible for paying them. I therefore take the view that these services should be subject to the same restrictions as Chatline Services and I ask the MMC whether or not it agrees with this view.

### THE PRICES OF MESSAGE SERVICES

I mentioned above that a number of the complaints I had received about Message Services focused on the level of the prices for the services. If current prices are indeed excessive, their reduction would not dispose of the other matters complained of; it would not remove the concern with the content of the messages nor would it remove the problem that many telephone calls to Message Services are made at somebody else's expense. However, I have a duty to ensure that prices for telephone services are not set at a level which involves abuse of monopoly power; and a reduction in price would at least lessen the problem of calls made at someone else's expense until other measures, such as call barring, can become fully effective. In other words, pricing is partly independent of the other issues about which complaints have been made to me but also partly related to those issues.

Questions relating to the pricing of calls to Message

Services are complex because the charge for the telephone call and the charge for listening to the message are both collected by BT and BT passes a share to the service provider. The charge has to be accommodated within BT's metering system and this causes certain artificial restrictions on the freedom of the competitive market. Ideally, in a competitive market, the price for each service could be set at any level chosen by the service provider, to cover the cost of the telephone call, according to a standard tariff, plus the cost of providing the information. Different messages would be priced at different levels. No need would arise to control the overall price: the element for the telephone call would be controlled but the addition for the service need not be controlled because any excessive price would be eliminated by competition.

However, even if users of the service were always responsible for paying their own bills, this process would be inhibited by BT's current metering arrangements. In the older public exchanges, the meters are capable of handling only a fixed number of rates of charge and that number was already being used to the full when current arrangements for Message Services were introduced.

Consequently, BT had to charge for Message Services at a rate that was already being used for some other purpose and it chose the 'm' rate, the rate used for telephone calls to the Republic of Ireland and to mobile telephones. Once BT's exchanges are converted in sufficient numbers to digital operation, this constraint will cease. In the meantime, however, the number of different rates of charge must be taken as fixed. If prices are regarded as excessive at present, they must be reduced for all 'm' calls, including calls to the Republic of Ireland – and this may be a fair outcome since if prices are averaged, costs must also be considered on an average basis – or Message Services must be transferred to a different charge band. For the purpose of these judgements, account must be taken of the costs incurred by service providers – because BT's metering system effectively imposes a kind of monopoly power on service providers collectively – and of difficulties caused by variations in cost from message to message.

I am conducting an investigation of these issues and I shall announce my conclusions as soon as possible. I am not asking the MMC to report on pricing issues at the present time except in so far as it concludes that it wishes to do so because of inseparability from the other issues under consideration.

## ADVERTISING

The final issue covered by complaints to me has related to advertising. It has been suggested that advertisements for Recorded Message Services sometimes imply that the message is pornographic even if it actually is not. Misleading advertising can be dealt with by complaining to the Advertising Standards Authority. However, the Code of Practice of ICSTIS also deals with advertising and incorporates the Code of Advertising Practice which requires, among other things, that "no advertisement, whether by inaccuracy, ambiguity, exaggeration, omission or otherwise, should mislead consumers about any matter likely to influence their attitude to the advertised product". This provision means that misleading advertising for Recorded Message Services can lead to a termination of the service provider's telephone service, in the same way as unacceptable message content. It is, of course, a matter of judgment whether or not a particular advertisement is misleading, but judgment is appropriately exercised by a committee like ICSTIS, and people who feel that advertising for a particular Recorded Message Service is objectionable can test the view that either the message content is unacceptable or the advertisement misleading by complaining to the committee.

## COMMENTS

I shall be very pleased to consider representations by anyone who supports the views set out in this statement or who wishes to advocate alternative views. Comment may also be submitted to the MMC while their investigation is being carried out.

BRYAN CARSBURG  
Director General of Telecommunications

19 July 1988

### Analysis of complaints made to OFTEL

During the period 1987 to mid-1988 OFTEL received 125 complaints from telephone subscribers about premium rate services. The Commission undertook an analysis of these complaints, and the following observations were noted:

#### A. Bill size

- (a) The average quarterly bill size was £299.<sup>1</sup>
- (b) The largest disputed bill amounted to £1,451 over a nine-month period. However, this bill included many overseas calls in addition to the use of premium rate services. The second largest bill was £1,343, including a bill brought forward amounting to £809. In this case a large number of calls were made to chatlines both in the United Kingdom and the United States.
- (c) The smallest disputed bill amounted to £43.
- (d) Among the complainants, 58 quoted the size of their typical bills. The size of disputed bills ranged from 1.5 to 15 times a complainant's typical bill.<sup>2</sup>

#### B. Services Used

- (a) Some 98 per cent of the cases investigated were related to the use of premium rate services. Amongst these more than 65 per cent predominantly involved the use of Talkabout, and some 5 per cent the use of other chatline services.
- (b) Almost 40 per cent of othe Talkabout cases involved use of the services by children.
- (c) Under 2 per cent of disputes concerned the use of overseas (United States) premium rate services.

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<sup>1</sup> 36 cases had bills greater than this average.  
80 cases had bills below this average.  
9 cases had no bill size mentioned.

<sup>2</sup> Three cases had a bill over 10 times their usual. 55 Cases had a bill ranging from 1.5 to 6 times their usual.

APPENDIX 4.1

(referred to in paragraph 4.1)

**ICSTIS**

**The Independent Committee for the Supervision of Standards  
of Telephone Information Services**

**Code of Practice**

**Introduction**

The Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS) was established in September 1986. Its function is to supervise the standards of telephone information and entertainment services carried over the Callstream network by British Telecom and to ensure adherence to the Code of Practice.

ICSTIS is composed of seven members—five persons independent of British Telecom and of any of the Service Providers and two representatives of the Association of Telephone Information and Entertainment Providers (ATIEP).

This Code supersedes an earlier one published by ATIEP.

**Code of Practice issued by The Independent Committee for the Supervision  
of Standards of Telephone Information Services (ICSTIS)—September 1987**

**The Code**

This Code of Practice applies to any communication conveyed over British Telecommunications plc's Callstream network: it is divided into two parts—(I) content of communications; and (II) promotional material and advertisements published by or on behalf of information and service providers.

**Part One**

**Content of communications**

**A. All Services\***

Communications must NOT:

- i encourage or incite any person to commit a criminal offence;
- ii create racial disharmony;
- iii contain false or misleading information;
- iv involve an unreasonable invasion of privacy;
- v cause outrage or gross offence by reason of their sexual or violent content;
- vi suggest, encourage or incite any person to use harmful substances or engage in dangerous practices;
- vii induce an unacceptable sense of fear or anxiety.

**B. Specialist Services**

Communications containing advice on any specialism involving the skill and judgment of the specialist must indicate clearly both the identity and the professional status of the person(s) supplying the specialist information. Where specialist services contain such advice, the communication must be prefaced with, and concluded by a statement that the recipient of the communication should not act upon such advice without first consulting a suitably qualified practitioner in the particular field of the relevant specialism. All communications containing such advice should be conveyed in a manner that reflects the seriousness of the subject matter of the advice, and should never be a device for unprofessional communications.

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\* service providers are reminded of the provisions of the Telecommunications Act 1984, section 43 (appended).

### **C. Religious and Political Communications**

Communications which reflect a particular religious or political viewpoint must pay due regard to the sensibilities of those who may reasonably be expected to hold differing religious beliefs or political opinions.

### **D. Children and Young Persons and other Dependent Persons**

Communications designed for, either wholly or in part, and aimed at an audience of, children and young persons must not include:

i references to sexual practices, such that a reasonable parent would not wish his or her child to know about;

ii language that a reasonable parent would not wish his or her child to hear.

Communications must not involve any invasion of privacy of any child or young person, or of any mentally disordered or mentally handicapped person, or of any other dependent person, having regard to the special protection needed for such dependent persons. Communications which encourage children and young persons, or any other dependent person, to ring additional telephone numbers are prohibited.

### **E. Charities**

Communications aimed at raising revenue for charitable purposes should clearly identify the fund raiser, the name of the charity, the charitable object to which funds are being donated, and the proportion of the call revenue to be donated on the telephone user's behalf.

Services which exist to publicise charities, but where donation of all revenue is not involved, should clearly state the service provider's identity, the charity's identity, and state that no call revenue is being donated.

## **Part Two**

### **Promotion and Advertising**

#### **F. Printed Promotional Material and Advertising**

In addition to the Code of Advertising Practice (CAP) and the British Code of Sales Promotion Practice (BCSPP) the following rules shall apply:

i The identity of the service or information provider shall be clearly indicated in all promotional material or advertising of the service.

ii The service provider shall clearly identify the precise charge for calls to each service advertised. Prices shall be noted in the form of a price per minute (or part of a minute), inclusive of VAT. The price of calls to the service should appear prominently in all advertising and promotional material.

iii The promotional material or advertisement in relation to specialist services must indicate the professional status of the person(s) involved in providing the relevant specialist service.

#### **G. Other Forms of Promotion and Advertising**

Promotional or advertising material on radio, television, cable, telephone or other forms of transmission will be required to observe these rules to an extent reasonable and appropriate to the technology employed.

### **\*Extract from the Telecommunications Act 1984, Section 43.**

#### **Improper use of public telecommunications system.**

43.—(1) A person who—

(a) sends, by means of a public telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character; or

(b) sends by those means, for the purpose of causing annoyance, inconvenience or needless anxiety to another, a message that he knows to be false or persistently makes use for that purpose of a public telecommunication system,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Subsection (1) above does not apply to anything done in the course of providing a cable programme service (within the meaning of Part IV of this Act).

(referred to in paragraph 4.8)

**Conditions for Callstream service**

Issue 1 April 1988

**1. Interpretation****1.1 This Contract governs:**

- 1.1.1 the provision of BT's Callstream facility to a BT telephone customer and is in addition to the Customer's associated contract for telephone service; and
- 1.1.2 the provision of BT's Callstream managed service to a Customer.

**1.2 In this contract:**

- "Access Date" means the date on which the Terminal Equipment is connected to PSTN or BT advises the Customer that Service can commence, whichever is the earlier.
- "BT" means British Telecommunications plc.
- "Call" means a telephone call connected to the Customer's Callstream number.
- "Caller" means a person who makes a Call.
- "Callstream" means BT's Callstream facility, and includes where appropriate BT's Callstream managed service.
- "Customer" means the person from whom BT has accepted an application for the Callstream facility or, as the case may be, the Callstream managed service.
- "Information" means information provided to BT by the Customer of the Callstream managed service which is to be made available to Callers.
- "ICSTIS" means the Independent Committee for the Supervision of Standards of Telephone Information Services.
- "Minimum Period" means the period referred to in paragraph 2.1.
- "PSTN" means BT's public switched telephone network.
- "Service" means any kind of message service offered to a Caller by the Customer or by BT using the Information, or any part of such service.
- "Terminal Equipment" means equipment which enables the Service to be provided and is located at the Customer's premises, other than equipment forming part of any BT network.
- "This Contract" means a contract between the Customer and BT incorporating these terms and conditions.

1.3 Words denoting the masculine gender include the feminine and vice versa and words denoting the singular include the plural and vice versa.

1.4 References to paragraph numbers are to the paragraphs of this Contract.

**1.5 All definitions, notes, terms and conditions:**

- 1.5.1 set out in BT's Price List published in accordance with paragraph 11; or
- 1.5.2 referred to in this Contract

form part of this Contract in appropriate circumstances. Copies can be inspected at or obtained from any BT District Office.

1.6 This Contract governs the provision of Callstream to the exclusion of any other oral or written statement or agreement whatever its legal character.

**2. Duration of the Contract**

2.1 The Minimum Period shall be 12 months or any other period agreed in writing with BT and shall begin on the Access Date.

2.2 If the Customer terminates this Contract during the Minimum Period the Customer must pay a sum equal to the minimum charges which would have been payable to BT for the balance of the Minimum Period, unless the Customer gives one month's written notice of termination because of an increase in the charges payable by the Customer to BT or a decrease in the charges payable by BT to the Customer under this Contract and such notice is given within two weeks of the Customer being notified.

2.3 Any future date specified by BT as the Access Date shall be treated as an estimate and BT does not accept any liability for failure to meet that date.

**3. Quality of Service**

3.1 The Customer must provide Service (or in the case of the Callstream managed service, Information) of a quality and kind likely to promote Callstream and suitable to be available via Callstream and of such a nature that is not likely to bring BT or Callstream into disrepute. Suitability shall be determined by BT and such determination shall be binding on the Customer.

3.2 The Customer must not state or imply any approval by BT of the contents of the Service or Information or refer to BT without the express approval in writing of a duly authorised employee of BT.

**4. Content of Service**

4.1 The Customer must not provide in the Service or Information any information any part of which would be (or which the Customer could reasonably be expected to know would be) a criminal offence or would otherwise be unlawful in the UK or would involve a wrong actionable within the UK at the suit of any person.

4.2 The Customer must ensure that before Service or Information is provided all proprietary interests, rights, authorisations, licences, consents and permissions, including any intellectual property rights, have been obtained and all such requirements of law complied with as may be necessary to enable Service or Information to be made available to Callers.

4.3 The Customer must comply with all requirements and conditions at any time and from time to time imposed on the Customer by law in the UK which are applicable to or affect the Service or Information and reasonably assist BT to comply with all requirements and conditions from time to time imposed by law in the UK which are applicable to or affect the Service or Information (or any part thereof) where it is the duty of BT to observe and carry out the same.

**5. General Requirements**

5.1 The Customer must not assign, transfer or sub-let this Contract or any part thereof to any other person without the written consent of BT. BT's consent is not required for any contract or arrangement between the Customer and any other person whereby that person supplies information with a view to its being included in the Service or Information.

- 5.2** The Customer must use reasonable endeavours to ensure that the number of attempted Calls at any time does not significantly exceed the number of the Customer's Callstream lines. Should the capacity be exceeded BT may notify the Customer and the Customer must take all reasonable steps to prevent such excess. For the avoidance of doubt, reasonable steps includes renting additional lines and/or adjusting the Customer's promotional activities for the Service.
- 5.3** The Customer must provide BT with such information relating to the Service or future Service as BT may reasonably request in order to promote Callstream in accordance with paragraph 9.2.
- 6. Cessation of Service**  
The Customer must immediately cease to provide any Service which BT determines to be a breach of paragraphs 3.1, 3.2, 4.1, 4.2 or 10 of this Contract.
- 7. Terminal Equipment**  
The Customer is responsible for providing and arranging for connection of the Terminal Equipment to the PSTN.
- 8. Callstream Managed Service**
- 8.1** Paragraph 6 does not apply to the Callstream managed service, to which the following conditions apply in addition to the other terms and conditions of this Contract:
- 8.1.1** BT may decline or cease forthwith to use any Information provided by the Customer which BT determines to be in breach of paragraphs 3.1, 3.2, 4.1, 4.2 or 10 of this Contract;
- 8.1.2** the Customer must provide BT with the Information in the format and at the times agreed in writing from time to time with BT; and
- 8.1.3** the Customer must not amend the Information delivery configuration of Service numbers, frequency of updating, number of messages, individual message duration or total duration except as agreed in writing with BT.
- 9. BT Obligations**
- 9.1** Callstream is not fault-free and the Customer is entitled only to the quality of service provided by BT from time to time for its Callstream customers generally.
- 9.2** BT may, if it deems appropriate, promote Callstream and BT agrees not to promote or otherwise make reference in its published information to the Service without the written consent of the Customer which must not be unreasonably withheld.
- 9.3** BT must ensure that the telephone numbers allocated by BT to the Customer are reserved for the exclusive use of the Customer for the duration of this Contract save that nothing in this provision shall prevent BT from altering such telephone numbers where such alteration is due to a national or local numbering scheme reorganisation of the PSTN. BT must give the Customer three months notice of any such reorganisation affecting such telephone numbers.
- 9.4** BT must, in the case of a Customer of the Callstream managed service:
- 9.4.1** update messages as agreed in writing with BT from time to time; and
- 9.4.2** make available status reports to the Customer at a frequency determined by BT from time to time.
- 10. Code of Practice**  
The Customer must comply at all times with the Code of Practice published by ICSTIS, as amended from time to time, and abide by any recommendation, opinion or advice the ICSTIS gives. This obligation does not affect the Customer's obligations under paragraphs 3.1 or 6, or BT's rights under paragraphs 15, 19 or 20.
- 11. Financial Provisions**
- 11.1** The Customer must pay BT on demand all applicable charges as set out in BT's Price List.
- 11.2** BT must pay the Customer all applicable charges as set out in BT's Price List. Such charges are payable within 45 days of the end of any period over which they are calculated, and must be accompanied by a statement showing details of the calculation of the payment.
- 11.3** In the event that any sum owed by the Customer to BT under the terms of this Contract or the Customer's associated contract for telephone service is not paid by the due date; BT is entitled to deduct such sum from any sum payable to the Customer in accordance with this paragraph 11. This is without prejudice to BT's other rights under this Contract or the contract for telephone service.
- 11.4** BT is entitled to change from time to time the charges payable by and to the Customer. BT must publish the charges in BT's Price List not less than two weeks before they come into effect.
- 11.5** BT may suspend payments due to the Customer at any time without notice, if in BT's reasonable opinion the Customer is not providing a bona fide Service or Information or is conducting his business illegally.
- 12. Deposits and Advance Payments**
- 12.1** BT may at any time require the Customer to pay a deposit of such amount as BT thinks fit, by way of security for the payment of any sums payable or to become payable by the Customer to BT. BT is entitled to retain the deposit until the discharge of all liability of the Customer under this Contract and may from time to time appropriate the deposit or any part of it in or towards payment of any sums due from the Customer to BT.
- 12.2** BT may add to the deposit or any part thereof which is repaid after retention for not less than one year a sum by way of simple interest calculated at such annual rate as BT may from time to time decide.
- 12.3** In addition to, or instead of, a deposit, BT may require payment in advance of an amount not exceeding the minimum charges payable by the Customer for the Minimum Period. The amount paid in advance shall be allowed to the Customer against the sums retained by BT under this Contract.
- 13. Customer's Indemnity**
- 13.1** The Customer will indemnify and keep BT indemnified against all liabilities actions proceedings claims and demands whatsoever arising directly or indirectly out of use of the Service or the provision of the Information. Unless otherwise agreed in writing by BT the Customer shall effect and maintain suitable legal liability insurance of not less than £1,000,000 for each and every claim arising during any period of insurance and shall produce to BT on demand a copy of the policy of insurance together with the current premium receipt.
- 13.2** The indemnity is subject to the following conditions:
- 13.2.1** nothing in this Contract renders the Customer liable to indemnify BT against any liability action proceeding claim or demand in respect of any errors in or omission from any information in the Service of Information caused solely by a fault in Callstream.
- 13.2.2** BT must promptly give to the Customer notice of any such action proceeding claim or demand and if the Customer thereupon notifies BT that the Customer accepts full liability to indemnify BT in the event of the Court or other competent authority giving judgement or a decision for the plaintiff:
- (a) BT must not admit liability or make any compromise or payment in respect thereof except with the consent of the Customer or under an Order of a Court;

- (b) BT must permit the Customer (or such person, firm or company as the Customer may from time to time nominate) in the name of BT to conduct and settle any such action proceeding or claim as the Customer may from time to time see fit; and
- (c) the Customer must reasonably consult BT from time to time in connection therewith and keep BT informed as to its progress.

#### 14. BT's Indemnity

- 14.1 BT will indemnify and keep the Customer indemnified against all liabilities actions proceedings claims and demands arising out of or in connection with any error in alteration of or omission from the Service or the Information or any part thereof caused by any fault in Callstream and which are validly and lawfully made by any third party.
- 14.2 This condition is subject to the following conditions:
  - 14.2.1 this indemnity does not extend to any liability for a breach of any contract between the Customer and any third party or to any action proceeding claim or demand in respect of or in consequence of such a breach of contract;
  - 14.2.2 the Customer must promptly give BT notice of any such action proceeding claim or demand and if BT thereupon notifies the Customer that BT accepts full liability to indemnify the Customer in the event of the Court or other competent authority giving judgement or a decision for the plaintiff:
    - (a) the Customer must not admit liability or make any compromise or payment in respect thereof except with the consent of BT or under an Order of a Court;
    - (b) the Customer must permit BT (or such person, firm or company as BT may from time to time nominate) in the name of the Customer to answer conduct defend appeal from and settle any such action proceeding or claim as BT may from time to time see fit; and
    - (c) BT must reasonably consult the Customer from time to time in connection therewith and keep the Customer informed as to its progress.

#### 15. BT Rights

- 15.1 BT may bar access to the Service (without prejudice to its right of termination under Paragraphs 19 or 20) to all Callers if the Service or any part thereof is in BT's absolute discretion in breach of paragraphs 3.1, 3.2, 4.1 or 10 of this Contract. BT is not liable to the Customer for barring access to any Service. BT must inform the Customer as soon as reasonably practicable that the Service is to be or has been barred.
- 15.2 BT may temporarily suspend or restrict access to any Service if at any time the number of attempted Calls is such that they cause congestion in the exchange or PSTN or disrupt other services. BT shall not be liable to the Customer for such suspension or restriction.
- 15.3 BT may assign this Contract to a subsidiary.
- 15.4 BT may request evidence from the Customer of compliance with paragraph 4.2, and the Customer must comply with such request forthwith.
- 15.5 BT may determine how the Customer's telephone numbers and geographical coverage should be presented in the Customer's promotional material and/or media publicity generally and the Customer must comply with BT's determination.
- 15.6 BT may perform monitoring of the Service where BT considers it to be appropriate.

#### 16. Proprietary Rights

- 16.1 This Contract does not operate as an assignment to either party of any copyright, registered design, trademark or any other proprietary right as may subsist in or be contained in or be reproduced in the Service.
- 16.2 Subject to paragraph 16.1, all copyright as may subsist in the form or presentation of the Service when so provided by the Customer shall be vested in the Customer.
- 16.3 Nothing in this Contract shall entitle either party to use the other party's name, logo or trademark in connection with Callstream or the Service or the promotion thereof without the prior written consent of the other.

#### 17. Confidentiality

- 17.1 Neither party may without the prior consent of the other disclose publish or make use of for its own or any purposes (other than for the purposes of this Contract) any confidential information concerning the other which may come to its knowledge as a result of the discussions leading to this Contract or anything done pursuant to it. This provision shall not apply to the disclosure or publication of any confidential information:
  - 17.1.1 to any person having a legal right or duty to obtain or require such confidential information in or for the purpose of any official inquiries, legal proceedings or arbitration to which BT or the Customer may be a party;
  - 17.1.2 where such confidential information has come into the public domain other than by a breach of this Contract; or
  - 17.1.3 which was already known to the other party at the date hereof, or is obtained from a third party without breach of any obligation of confidentiality.
- 17.2 These obligations of confidentiality cease to have effect five years after the termination of this Contract.

#### 18. Force Majeure

Neither the Customer nor BT shall be liable in respect of any breach of this Contract due to any cause beyond its reasonable control including: Act of God, inclement weather, flood, lightning or fire; industrial action, or lockouts; the act or omission of Government, highways authorities, or other competent authority; war, military operations, or not; the act or omission of any party for whom the Customer or BT (as appropriate) is not responsible.

#### 19. Default

- 19.1 Without prejudice to other rights, either party shall have the right forthwith to terminate this Contract and to claim for any resulting losses or expenses if the other party:
  - 19.1.1 is in breach of this Contract and fails to remedy the breach within a reasonable time of a written notice to do so; or
  - 19.1.2 is the subject of a petition for a bankruptcy order (or in Scotland is sequestrated or in Northern Ireland is adjudicated bankrupt) or becomes insolvent or compounds with his creditors or suffers execution, distress, any form of diligence or seizure to be levied or effected on or against his premises, assets or effects of being a company a petition for an administration order is made against it or it goes into liquidation whether voluntary or compulsory (otherwise than for reconstruction or amalgamation) or has a receiver of any assets appointed.
- 19.2 Any waiver by BT of a breach by the Customer of any provision of this Contract shall be limited to the particular breach and shall not operate in any way in respect of any future breach by the Customer, and no delay on the part of BT to act upon a breach shall be deemed a waiver of that breach.

**20. Termination**

- 20.1** This Contract may be terminated at or at any time after the end of the Minimum Period by BT giving the Customer at least one month's written notice, or by the Customer giving BT at least seven days written notice.
- 20.2** Termination of this Contract under paragraphs 19 or 20 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either of the parties hereto under or by virtue of the terms and conditions of this Contract.
- 20.3** On the termination of this Contract BT will as soon as practicable prevent access by Callers to the Service.

**21. Limitation of Liability**

- 21.1** Except where expressly contained in these conditions BT has no obligation duty or liability in contract, tort or breach of statutory duty or otherwise beyond that of a duty to exercise reasonable skill and care.
- 21.2** In any event in no circumstances shall BT be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for loss (whether direct or indirect) of profits, business or anticipated savings or for any indirect or consequential loss whatever.
- 21.3** In any event BT's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Contract or howsoever otherwise shall be limited to £1,000,000 for any one incident or series of incidents and £2,000,000 for any series of incidents related or unrelated in any period of 12 months.
- 21.4** BT does not exclude or restrict liability for death or personal injury resulting from its own negligence.

- 21.5** Each provision of this paragraph is to be construed as a separate limitation applying and surviving even if for any reason one or other of the said provisions is held inapplicable or unreasonable in any circumstances and shall remain in force notwithstanding termination of this Contract.

**22. Service of Notice**

- 22.1** Any notice to be served on either party by the other shall be in writing and delivered by hand or sent by telex or by pre-paid ordinary post to BT at the address referred to below or to the Customer at the address stated in the Customer's application as the Customer's address, or any address notified to BT as an address to which accounts may be sent, or if the Customer is a limited company, to its registered office.
- 22.2** BT's address for the service of any notice by the Customer under this Contract shall be the address shown on the last account rendered to the Customer or other such address as BT may prescribe for that purpose.

**23. Variation of Terms and Conditions**

BT may from time to time amend this Contract by a document referring expressly to this paragraph and signed by a duly authorised employee of BT and BT must as soon as possible and in any event not less than fourteen days before any such amendment is to take effect, give written notice of such amendment to those Customers who will be affected by it.

**24. No Agency**

For the avoidance of doubt, BT is not the Customer's agent for any purpose connected with this Contract.

## APPENDIX 4.3

(referred to in paragraph 4.23)

### ITCA Rules and Code of Practice as formally adopted

#### Details of Rules

All members of the ITCA shall ensure that all Chatline Services provided shall comply with the following conditions:

1. No advertisements may be placed in publications directed at persons under 18. All advertisements must stipulate clearly the rates payable by the calling customer, in a type size identical with advertising body-copy.
2. The maximum number of people permitted in any one group conversation will be 20. Service Providers must ensure that each group conversation is listened to continually by a human monitor who adheres to a formal Code of Practice of Monitoring Standards (the "Code of Practice") certain contents of which are attached hereto in draft form. At the time of entering into employment, a monitor must be given a copy of the Code of Practice and sign a further document to confirm that the monitor had read the Code of Practice, had had its contents and significance explained and that the monitor will comply with its provisions. Amongst other things, this Code of Practice will require each monitor to switch off any caller who:
  - (a) uses or encourages the use of foul language or engages in a conversation of a menacing, offensive or threatening character;
  - (b) gives out or encourages the giving out of surnames, place of work addresses or telephone numbers or arranges or attempts to arrange any meeting while connected in group conversation;
  - (c) engages in or encourages any conversation which any reasonable person may consider to be indecent, dishonest or committing or encouraging the commission of a criminal offence;
  - (d) remains silence for a prolonged period, and fails to respond to the monitors enquiries.

Monitors will be required to be fully and properly trained in implementing such standards.

3. Service Providers must make all necessary arrangements to ensure that at regular intervals of not less than 15 minutes each caller is given an announcement of the rates payable.

Service Providers must also take steps towards the introduction of the following arrangements as soon as practicable:

  - (a) on connection of each new caller an introduction message is automatically broadcast, giving details of the charge bands, call costs and disallowable conversation messages; and
  - (b) in certain appropriate circumstances callers are intercepted and are asked to give their telephone number and the name of the subscriber. This will then be rung back by the Service Provider.
4. Service Providers shall be under an obligation to procure and use any available equipment of an automatic nature which is able by means of voice recognition facilities or otherwise significantly to enhance or add to the level of monitoring required in paragraph 2 above. This is without prejudice to the Service Providers' obligation in paragraph 2 to maintain constant human monitoring.
5. If any complaint is received from a customer which demonstrates on reasonable ground that calls have been to a member's service in circumstances

in which that member has failed to comply with these Rules and/or the Code of Practice, the ITCA may call upon that member to put the ITCA in funds to enable such customer to be paid a reasonable sum in proportion of the damage suffered.

### **Code of Practice of Monitoring Standards**

These procedures are the basic guidelines to be gone through by the monitor in appropriate circumstances.

#### *Age Checking Procedure*

1. The monitor asks the caller their age.
2. The monitor asks the caller their date of birth.
3. If the caller hesitates on answering either of the above or the answers to 1 or 2 do not correlate then the caller is probably under 18 and should be disconnected.

#### *Silent Caller Identification*

If a caller had been on the service for a significant amount of time and has not spoken then the following procedure should be initiated.

1. Monitor prompts caller to speak, if no response then
2. the monitor informs the caller of the potential costs arising from over-use of the service. If no response then
3. the monitor informs the caller that unless the caller offers some form of identification the caller will be cut off. If no response is forthcoming then caller is disconnected.

#### *Call Back Procedure*

To be used when callers are excessively using the service or when a caller is suspected of abusing another subscriber's telephone.

Any caller who appears to be using the service excessively will be warned by the monitor of the potential costs arising from their usage. Further, if the caller seems unconcerned about the cost of the call, then the caller must prove to the monitor via the following call back procedure that they are the telephone subscriber.

1. Monitor asks whether the caller is using their own telephone or has permission to use the telephone.
2. Monitor asks for the caller's name, address and telephone number so that
  - (a) the name, address and telephone number can be checked via directory enquiries.
  - (b) The caller can be redialled to verify the telephone used to make the call.
3. If caller refuses to answer questions and fails to give a satisfactory reason for not doing so the caller is disconnected.

APPENDIX 4.4  
(referred to in paragraph 4.34)

**List of ATIEP members as at December 1988**

Airphone Datalines Ltd  
British Thoroughbred Racing & Breeding PLC  
Broadsystem Ltd  
Cablecom Productions  
Computerdial Ltd  
Dial-Up Service Ltd  
GAT (Girl About Town) Publishing Ltd  
Grampa Communications Ltd  
Legion Telecoms Ltd  
Space City Music Ltd  
Tele Audio Media Ltd  
Telecom Information  
Telephone Information & Communication  
Telephone Information Services Ltd  
Websters Publications Ltd  
William Hill Leisure Ltd

*Source:* ATIEP.

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