

## 6 Conclusions

**The reference** 6.1. This is the first reference to the Commission under the provisions of section 13(1) of the Telecommunications Act 1984 (the Act). Under the terms of the reference (which are reproduced at Appendix 1.1), we are required to report on whether the provision by British Telecommunications PLC (BT) of chatline services and message services by means of its public switched telephone network, or the provision by BT of a telecommunications service to other persons enabling them to provide the services by means of that network, operates or may be expected to operate against the public interest; and if so whether the effects adverse to the public interest could be remedied or prevented by modifications to the conditions of BT's licence.

6.2. Under section 13(3)(a) of the Act, the Director General of Telecommunications (the DGT) specified that in his opinion an effect adverse to the public interest is that the manner in which access to chatline services and message services is provided fails to provide the person who may be legally responsible for meeting any charges incurred ('the customer') with adequate means of control over the use of the 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 of control over the types of services to which access is available, and over the costs or charges that may be incurred.

6.3. Under section 13(3)(b) of the Act, the DGT further specified that, in his view, these effects adverse to the public interest could in the case of chatline services be remedied or prevented by modification to BT's licence. The draft of the proposed modification is at Appendix 1.1; in effect, it would require chatline services to be provided only if a customer had in advance and in writing requested the provision of the service, and if an itemised bill was issued for the use of the service.

6.4. The DGT did not specify a proposed licence modification for message services; but in the statement accompanying the reference has asked us to consider which of three possibilities, if any, we believe should be adopted:

- (a) a requirement that information services should be separated from entertainment services, with distinctive families of numbers. This could be allied to a requirement for the operator to provide call-barring facilities at a reasonable price in relation to cost as soon as it is technically and economically feasible;
- (b) a classification into entertainment services and information services, with a requirement that entertainment services would have to meet conditions for contracting-in and itemised billing; or
- (c) a requirement that BT should introduce call-barring facilities as soon as it is technically and economically feasible.

6.5. In considering whether the provision of the services operates or may be expected to operate against the public interest, we are not constrained to consider only the adverse effects specified by the DGT. Under section 13(8) of the Act, in determining whether any matter operates or may be expected to

operate against the public interest, we are required to have regard to the duties imposed on the Secretary of State and the DGT by section 3 of the Act. These are also reproduced in full in Appendix 1.1. In particular, under paragraph (a) of the section 3(1) of the Act, the Secretary of State and the DGT have a duty each to exercise his functions in the manner which he considers is best calculated 'to secure that there are provided throughout the United Kingdom, save in so far as the provision thereof is impracticable or not legally practicable, such telecommunication services as satisfy all reasonable demands for them...'. Subject to this paragraph, the Secretary of State and the DGT have a further duty under section 3(2) to exercise their functions in the manner best calculated (*inter alia*) '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'; to 'maintain and promote effective competition between persons engaged in commercial activities connected with telecommunications in the United Kingdom'; and 'to promote research into and the development and use of new techniques by such persons'.

6.6. During the course of our inquiry our attention was also drawn to the European Convention of Human Rights (ECHR) and in particular Article 10 (see paragraph 4.28). In considering our conclusions, we have taken account of the ECHR, and of Article 10 as a whole.

*Reasons for the reference*

6.7. In February 1988, following many complaints about BT's chatline service (which was called Talkabout) and a subsequent investigation, the DGT called for the imposition of controls on the provision of chatline services—namely to ensure that the services were provided only to customers who had actually 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 the Talkabout service, on the grounds that its provision would be uneconomic if these conditions had to be met. The provision of chatline services by non-BT suppliers continued, and the DGT began proceedings to seek the imposition of restrictions formally on all suppliers. The DGT provisionally reached agreement with all five operators of telecommunication services in the United Kingdom on a broad form of licence amendment; but BT was unable to give formal agreement to the licence amendment because of its legally binding commitments to the service providers (SPs). The DGT therefore referred the problems relating to chatline services to the MMC, and also included message services in the reference.

6.8. BT told us, however, that its previous provisional agreement to the proposed amendment should not be taken as a precedent for public interest findings; and indeed it believed that it was not operating against the public interest in providing facilities for any of the reference services.

**Premium rate services  
(PRS)**

6.9. The services we have been asked to consider are priced at a premium rate, above that of a normal local or trunk call; we have therefore generally referred to them as premium rate services (PRS). The charge by BT for a call to the services includes both the payment to BT for the transmission of the message over the BT network, and the payment by BT to the SP for the message or other 'value added' facilities he provides.

6.10. As discussed in Chapter 2, facilities for PRS are provided by means of BT's Derived Services Network (DSN), which comprises eight switching centres situated throughout the United Kingdom, to which most SPs are directly connected. (In the case of managed services, messages are stored and assessed on equipment, rented by the SP, at the switching centre.) BT, through BTE Spectrum, is itself the biggest of about 120 SPs and in the first quarter of 1988/9 accounted for some 13 per cent of all SP revenues.

6.11. BT is one of five network operators in the United Kingdom. Some SPs also operate on the Racal-Vodafone network, and can be accessed by BT subscribers (although it has been queried whether the provision of these services is consistent with the terms of Racal-Vodafone's licence). No PRS are at present provided by Mercury, nor, we understand, are they provided on the Cellnet or Kingston-upon-Hull networks (although subscribers on these networks can access BT PRS). These four other network operators have agreed with the DGT to accept as modifications to their own licences any amendments to the BT licence that may result from our inquiry.

6.12. The PRS facility was introduced by BT in January 1986; the term 'Callstream' was subsequently adopted for these services. Prior to 1986, a number of message services—known as Guidelines—had been provided by BT itself, charged at local call rates. Although the range of services was limited, use was considerable (460 million calls in 1983/84, 200 million excluding the speaking clock). BT told us that the Guideline services were unprofitable, and their continuation difficult to justify given the conditions in BT's licence prohibiting unfair cross-subsidy. With the exception only of the speaking clock (now known as Timeline), all of the Guideline services have now been withdrawn.

6.13. Use of PRS has grown rapidly. About 39 million calls were made to the services in 1986/87, 107 million calls in 1987/88; and some 43 million calls in the first quarter of 1988/89 alone. Gross revenue (the amount paid by callers, less VAT, including therefore payment to both BT and the service providers) was some £20 million in 1986/87, £67 million in 1987/88; and some £25 million in the first quarter of 1988/89. Revenue for the whole of 1988/89 is projected by BT at about £130 million. Strong growth is expected to continue (although the rate of growth may decline), BT estimating that revenues will double within about five years.

6.14. There has also been a significant expansion in the range of services available. These now include sporting information including the live commentary, financial information, horoscopes, dating services, medical services, weather forecasts, telephone voting, chatline services and services described by their providers as 'adult entertainment'. The majority of SPs from whom we heard told us that they planned to develop their services further; the potential for such development would seem considerable.

*Chatline services*

6.15. Chatline services enable a caller to be connected to a number of other callers for a group conversation; the SP may also employ monitors to supervise and control the content of the conversation, or more actively to participate. BT's 'Talkabout' services were the first chatline services in operation, and although other services became established during 1987, Talkabout, with a revenue of some £5 million, still accounted for the bulk of chatline revenues in 1987/88. Calls to Talkabout were charged at the relatively low 'a' rate, but chatline services currently being provided are all charged at the much higher 'm' rate.

6.16. Talkabout was withdrawn in February 1988. BT estimates that in the first quarter (April to June) of 1988/89, over 20 independent companies were providing chatline services, with over 4 million calls and a revenue to the chatline operators in excess of £2.5 million.

*One-on-one services*

6.17. The DGT's statement also referred to 'one-on-one' services. These involve a conversation between only the caller and the SP, and are distinguishable from ordinary telephone conversations by the fact that the customer pays a premium charge for the service, part of which is passed to the SP. Of over 50 SPs who gave us details of their operations, seven told us that they provided one-on-one services. Mostly these services provided general discussions, but some were a method of providing information, including, in one case, the answering

of detailed trade queries. While we acknowledge the wide variety of 'one-on-one' services, and the scope for their future development, we consider that they can at present reasonably be regarded as more akin to chatline than message services and treated in the same way.

**Public interest issues**  
**A. Access to services**

6.18 The concern expressed by the DGT is that the ease of access to these services enables them to be provided to persons other than the paying customer; and the lack of adequate means of control significantly impairs the value and quality of the telephone service as a whole.

6.19. It has been argued to us that the problem of ease of access is not confined to PRS; that unauthorised calls, even international calls, can be made by children or employees to friends or relatives.

6.20. However, we believe that the introduction of the PRS has significantly accentuated this problem. The services are considerably more expensive than ordinary inland calls; indeed the charges are based on those of international calls to the Republic of Ireland, and to cellular telephones. Use of international services is partly limited according to whether families or employees have friends or relatives overseas; and indeed such friends or relatives themselves may not wish to talk on the telephone too frequently or for too long. The reference services, on the other hand, have been developed as products in themselves to attract additional use of the phone, and are widely advertised. Some advertisements have indeed been particularly aimed at children and teenagers not responsible for paying the telephone bill. Many of the services, such as chatlines or sporting commentaries, are effectively open-ended, and very large bills can be accumulated by any one call. The services are moreover expected to grow significantly, which could accentuate the problem of unauthorised use.

6.21. As we discuss below, many of BT's residential customers are in a weak position to control use of their phones. These services are unusual, as a medium of information or entertainment, in that large bills can be incurred with no record of their use, with no specific authorisation from those responsible for paying the bills, and with no separate billing of each use made of the service. The services are also of growing importance. We believe therefore that, by their nature, they may be expected to give rise to a serious problem of unauthorised use, the cost of which, under the terms of BT's contracts, falls on the customer.

*Extent of unauthorised use*

6.22. It is clearly difficult to estimate the extent to which these services are used at other people's expense and without their consent, in particular by children or employees. BT monitors the total use made of PRS at a sample of residential and business lines (see paragraph 2.73). In May 1988, only about 8 per cent of residential customers used PRS at all; and just over 0.1 per cent of residential customers made more than 30 calls to PRS in that month. Only one out of the 12,000 customers sampled made over 100 calls (some 344 calls at a cost of several hundred pounds). A larger proportion of business customers sampled used PRS, but with little evidence of large use. The bulk of calls to the services are made from residential lines.

6.23. Similarly, a survey undertaken for the DGT specifically on the use made of BT's Talkabout service showed that only a small proportion of adult respondents had themselves used the adult Talkabout service (12 respondents out of 1,010), or believed that their children had used the Teenage Talkabout service (24 respondents—almost 5 per cent of those with teenage children). Only 13 respondents had noticed an increase in quarterly bills since their children started using Teenage talkabout, five of whom believed their bills had increased by over £40 per quarter (including one by over £160 per quarter).

6.24. Neither of these surveys distinguishes unauthorised use of the services; but if the overall incidence of access is, as the surveys suggest, limited, then the incidence of abuse will be more limited still. Equally, because the extent of

unauthorised use is limited, it is difficult to estimate the resulting size of bill from sample surveys of telephone customers as a whole. We have also therefore had regard to the number of complaints about high bills attributable to the use of PRS in general, and chatline services in particular.

6.25. BT provided us with a summary of 33 complaints about the high bills associated with BT's own Talkabout services which had been received at its Headquarters between April 1987 and February 1988. Additionally, it carried out for us a survey of complaints handled in 7 out of 28 BT districts in a sample of three months over the last two years. Complaints about PRS represented a very low proportion (some 2 per cent) of all complaints received in these districts. Almost 90 per cent of these PRS complaints were from residential as opposed to business users. Based on the whole sample, BT estimated that there are 7.4 PRS billing complaints each month per million residential customers. This would represent about 1,650 complaints per year (or up to 3,000 complaints per year at the upper 95 per cent confidence limit). There was, however, a somewhat higher incidence of complaints in June 1988—10.1 complaints per month per million residential customers, up to 5,000 complaints per year. The average amount of disputed bills was almost £300, the highest £1,900.

6.26. OFTEL showed us details of about 125 complaints, all from residential customers received during 1987 and the early part of 1988 concerning high bills associated with calls to PRS. The average amount in dispute was about £300, the highest £1,450. (Some more recent cases, however, have involved larger bills in one case approaching £3,000.) Chatline services (mainly Talkabout) were identified in almost two-thirds of these cases.

6.27. These various statistics would appear to confirm that, although abuse of the services is not widespread, the financial problems caused to some residential customers of BT are of considerable severity. The main source of complaints relates to chatline services, although we have also seen a few complaints concerning message services, in particular sporting information services. It is, however, impossible to determine whether recorded complaints represent the tip of the iceberg, and whether there are many more cases where parents or employers have not complained about bills that result from unauthorised use of the reference services, or may even be unaware of such unauthorised use, for example if the effect on telephone bills has been only limited.

6.28. The bulk of the complaints received by OFTEL relate to BT's own Talkabout services. 'Teenage Talkabout' was marketed at under-18-year-olds; and monitoring arrangements were less extensive than those which many chatline operators told us that they now adopt. On the other hand, the charges for the services were considerably lower than the 'm' rate at present charged, and a ten-minute limit was introduced for calls to Teenage talkabout.

6.29. Several chatline providers have attempted to reduce the risk of unauthorised calls by teenagers. The services are not marketed to teenagers; monitors attempt to establish the age of callers and disconnect those younger than 18; some impose a limit to the duration of calls after which an attempt is made to confirm the identity of the caller. Incidences of abuse have still occurred, although some SPs have offered compensation in cases where their own procedures have been deficient. There is, however, no obligation to operate these safeguards. The apparent increase in complaints to BT in June 1988 would suggest that there are still problems associated with PRS.

*Availability of call-barring  
and itemised billing*

6.30. It was argued to us that it was for the customer, ie parent or employer, to prevent unauthorised use of these services, rather than the network operators or the SPs. At present, however, the customer is in a weak position to do this. The problem seems to be most common when teenage children are unaccompanied at home. In many cases, it is not apparent that large, unauthorised charges have been accumulated until a three-monthly bill has been received.

Even at that stage call-logging by BT is required in order to establish that the bill results from use of PRS. In some cases, until that stage, customers have been unaware of the existence of PRS; in other cases they had not appreciated their cost.

6.31. Call-barring devices are available for domestic customers, but are not well promoted, and, given their cost, customers are not likely to think it worthwhile to fit such equipment or even to consider use of such equipment until large unauthorised bills have been incurred. Call-barring facilities are, however, incorporated in the private branch exchanges used by most medium and large businesses; and employers in small businesses are likely to be in a better position to monitor and discipline their employees than is true for many domestic situations. We do not therefore have evidence that access to these services is such a significant problem for employers; and indeed we have received few complaints about misuse of the services by employees.

6.32. Modernisation of BT local exchanges will provide a significant enhancement in the facilities available to BT's customers and increase the ability of customers to monitor and control use of their telephones. BT plans to offer itemised billing to 90 per cent of London customers, and almost half of the customers in the rest of the country, by 1990, increasing to 100 per cent by 1995. This will allow easier identification of the unauthorised use PRS, but after such bills have been incurred. This may deter some unauthorised use of the services. Introduction of digital exchanges may allow BT to notify customers of unusually large bills more frequently than is feasible on the present exchange equipment, but BT has taken no decision about introducing such a facility. Introduction of digital systems will also allow call-barring at the local exchange, and give BT customers the opportunity to opt out of PRS as a whole. When the whole network has been modernised, it may also be economic to provide caller identification—by which a SP, for example, would be in a position to validate the identity of a caller, or the calling line; but BT does not at present have firm plans to introduce such a facility.

*Public interest assessment*

6.33. Many of BT's residential customers are at present in a weak position to control use of their telephones. This is a general problem which has been much accentuated by the development of these potentially very expensive services. Unauthorised access to these services has caused serious problems and may be expected to continue to do so, albeit to only a small minority of domestic users. The bulk of the complaints to date relate to chatline services, but we have also seen cases of large bills incurred through unauthorised use of message services, especially the longer message services such as live sporting commentaries; and there would seem considerable potential for unauthorised use of some services, such as interactive games, aimed at children. We have seen no actual evidence of unauthorised use of 'one-on-one' services. These are, however, still at an early stage of their development, and we believe that by their nature they could also involve the incurring of large bills by people not responsible for paying them.

6.34. On the other hand, we must consider the benefits of the services. The DGT's statement acknowledged the value of many recorded message services. Similarly, in the case of chatline services, we believe that, however banal the conversations may appear, the services have some value for which some users are prepared to pay. To have delayed the introduction of either chatline or message services until facilities for controlling access or itemised billing were available or to have increased the costs of accessing the services by, for example, insisting on intervention by an operator could also have been considered detrimental to the public interest. Similarly, the accessibility of the services is an important part of their appeal particularly to the many 'impulse users'. Hence, a requirement to contract-in (for example, by issuing subscribers with Personal Identification Numbers) would have significantly reduced the demand and development of the services, and indeed may have made BT's own investment in facilities for PRS unviable.

6.35. On balance, however, we find that the problems associated with both chatline and message services are such as to justify the finding that the services operate and may be expected to operate against the public interest. Nevertheless, we believe that the benefits of the services must be recognised in designing remedies for this adverse effect in particular that the remedies adopted should not be such as to prejudice the continuation of the services, or unduly inhibit their further development.

6.36. We therefore conclude that the provision by BT of chatline and message services by means of its public switched telephone network, and its provision of a telecommunications service to other persons enabling them to provide chatlines and message services by means of that network, operates, or may be expected to operate, against the public interest. The effect adverse to the public interest which such provision has had or may be expected to have is that, due to the ease of access to the services, and the terms of contract between BT and its customers, the customer has inadequate control over the types of service which can be accessed and over the costs or charges that may be incurred for use of the services, which significantly impairs the value and quality of the telephone service to the customer. In paragraph 6.56 we discuss whether any modification to BT's licence could remedy or prevent this adverse effect.

6.37. We recognise that BT was not itself providing chatline services during the course of our inquiry. Its previous chatline services, however, clearly gave rise to many of the problems we have discussed above; were BT to recommence such services (which it is free to do), they would be subject to the general problems associated with PRS and may be expected to operate against the public interest. We regard these factors as falling within the scope of the 'questions relating to the provision of telecommunication services' as to which we are required to investigate and report.

6.38. We do not believe that an adverse public interest finding on this issue should, however, be taken as a criticism of BT management. BT clearly acted responsibly in suspending its own Talkabout services, and in provisionally agreeing to a licence amendment on chatline services. BT has an obligation under its licence to provide voice telephony services, and to connect a customer's system to the network: without a licence amendment BT may not have been in a position confidently to restrict the provision of chatline or message services.

6.39. As well as the problem of access to the services, a number of other issues were raised with us during the course of our inquiry.

## **B. Pricing of PRS**

6.40. The DGT in the statement accompanying the reference did not ask us to report on pricing issues, except in so far as we wanted to do so because of their inseparability from the other issues under consideration; the DGT is indeed conducting his own investigation of pricing issues. However, we received a number of complaints from both SPs and users about the prices charged for PRS.

6.41. We have no doubt that the basis of pricing for PRS is unsatisfactory. Because of the DGT's own inquiry in to BT's pricing of the services, we have not considered the overall level of prices, but we believe that the inflexibility of the prices charged constrains competition between SPs, leads to overcharging of low-cost services which reduces demand for such services, and gives insufficient opportunity for the development of high-value, high-cost services.

6.42. In his statement the DGT suggested that the limitations of BT's metering system effectively conferred a kind of monopoly power on SPs collectively. We appreciate the present technical limitations on the number of charging rates that can be used for the services. This limitation should be partly removed when the existing Analogue Group Switching centres are fully replaced by Digital Main Switching Units, although BT is not yet in a position to say how many additional charge bands will be made available for PRS. Creation of a broader spectrum of

prices for PRS is essential if the services are to be developed to their full potential. We believe that the DGT should take full advantage of his powers to influence BT's pricing policy in this respect.

6.43. Complaints were also made to us about the split of revenue between BT and the SPs. We make no finding on whether the present apportionment of revenues leads to excess profits for BT, or inadequate profits for SPs as a whole, although almost a third of SPs from whom we received information—generally those only very recently established—are operating at a loss. We are confident that the DGT's current investigation will carefully examine both the prices charged to customers for the use of PRS, and the payments to SPs.

### **C. The content and advertising of the services**

6.44. We received many complaints about the content and the advertising of PRS. We were, for example, told that the advertising and content of certain services, described by their providers as 'adult entertainment', brought PRS in general into disrepute, and that this was contrary to the provisions of BT's contracts with SPs, which, it was argued, BT had failed adequately to enforce.

6.45. The complaints about content and advertising of message services relate to these 'adult entertainment' services. The transmission of messages that are 'grossly offensive, or of an indecent, obscene or menacing character' is already an offence under section 43 of the Act. BT has itself, through the establishment of the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), instituted a system of monitoring and control that goes somewhat beyond the provisions of the Act to deal with matters that offend public taste, but may not be serious enough to contravene the Act. ICSTIS has recently commenced random monitoring of message services, as well as acting upon complaints. BT has shown that it is prepared to act upon the recommendations of ICSTIS and disconnect any offending services.

6.46. Given the recent extension in ICSTIS' activities and the conscientious manner in which ICSTIS carries out its responsibilities, we do not believe that the content of message services can at present be regarded as operating against the public interest. The suggestion was, however, made to us that a separate dialling code should be available for the providers of 'adult entertainment' services to distinguish themselves from other SPs, and that this could be to the benefit of both types of SP. We suggest that BT should consider such an approach when the present numbering plan is enhanced in the early 1990s.

6.47. Many of the complaints we received concerned advertising. The ICSTIS Code of Practice incorporates the Code of Advertising Practice of the Advertising Standards Authority which, for example, states that advertisements should contain nothing likely to cause grave or widespread offence. Our impression is that some advertisements do cause widespread offence, particularly in free newspapers that are available, uninvited, to the whole family.

6.48. We understand that ICSTIS has recently begun to put more emphasis on the nature and placement of associated advertising. This is clearly important in that, contrary to the situation of most other advertised products, the advertisement is the only route through which access to PRS can be made available to the general public. An unadvertised number cannot do business. We believe that the problems associated with advertising are best dealt with through self-regulation, by rigorously enforcing ICSTIS' Code of Practice. However, it is also in part a matter of editorial responsibility; we suggest that ICSTIS should also therefore approach the editors of the free publications containing the advertisements which cause widespread offence, and seek their agreement to limit such material.

6.49. The current ICSTIS Code requires that the price per minute of calls should appear prominently in all advertising and promotional material, and the current efforts being made by ICSTIS to ensure adequate display of the charge

are to be welcomed. It is clearly essential that users should be aware of the considerable cost of these services. Charges are at present often displayed in small or even indecipherable print; we consider that the charge should be displayed in the same print size as the telephone numbers themselves to ensure that the user is aware of the cost of the call. We further note that charges are quoted in terms of pence per minute (or seconds per 5 pence). The most recent draft of the revised ICSTIS Code of Practice incorporates a requirement that the duration of messages of over five minutes should be stated at the beginning of the message. We believe that there would be additional benefits to users if the length of the message, or the cost of the full message, were also to be displayed in advertisements. BT and ICSTIS could also usefully consider whether it would be feasible to introduce some indication of how long a user has been connected: for example, a variation of the previous three-minute pips. The present ICSTIS Code also requires the name of the SP to be stated. We are disappointed that the draft of the revised ICSTIS Code drops this requirement, and indeed believe that users of the services would be in a stronger position to complain in writing about the content of messages if there was a further requirement to show the address of the SP as given on the contract with BT.

6.50. Complaints about the content of chatline services generally relate to BT's former Talkabout service, in particular to various serious incidents resulting from the exchange of addresses on Teenage Talkabout, and to the language used. BT's own studies showed that the standards of monitoring on Talkabout were inadequate. There is still no formal requirement on chatline operators to follow a code of practice, although a number of operators do observe either their own codes of conduct or that of the Independent Telephone Chatline Association (ITCA). Transcripts of some services we have seen, however, suggest monitoring is still far from adequate. BT told us that, had it not been for this reference, a formal code of practice for chatlines could well have been agreed. The adoption of a code of practice for chatlines, monitored and enforced by ICSTIS or a similar supervisory body, would appear desirable to avoid any recurrence of the problems that arose with Teenage Talkabout. This would require, *inter alia*, adequate monitoring of conversation by SPs, random monitoring of the services by the supervisory body and the taping of conversations to enable the supervisory body to follow up complaints. (The adoption of a code of practice for chatline services to reduce the incidence of unauthorised use is discussed in paragraph 6.66.)

6.51. We consider therefore that there are reasons for concern about the content and the advertisement of both message services and chatline services. These are, however, issues which can be most effectively dealt with by self-regulation, backed by the power of BT to remove any services which do not comply with the industry's code of practice. Given the existence of ICSTIS and its Code of Practice, an adverse finding on these issues would not seem appropriate, even though there are some areas in which the present self-regulatory system could be strengthened. It is, for example, necessary to include the services provided by the other telecommunications operators; some tightening of ICSTIS' current role on advertising would be appropriate; and finally we believe that a code of practice should be adopted for chatlines. We suggest that the DGT, BT and ICSTIS should consider whether ICSTIS is the appropriate body to undertake such an enhanced system of self-regulation; and if so whether it should be strengthened, and be made more independent of BT both in funding (a levy on SPs may be appropriate, for example), and in making appointments.

#### **D. BT's dual role as network operator and SP**

6.52. The main concern raised with us by SPs related to BT's dual role as dominant network operator and SP. It was argued, for example, that BT was in a position to give priority to its own PRS operation in providing lines and other facilities, to make use of information about the activities of other SPs and copy

their initiatives, and to cross-subsidise its own PRS activities (see Chapter 4). Some SPs also complained that they were unable to obtain the information about the market in general, and the use made of their own services: such information was, however, available to BT. SPs also protested that they were unable to advertise in telephone directories (this ban applied also to BTE Spectrum).

6.53. BT's licence allows it to perform the dual role of network operator and SP, and incorporates certain safeguards against abuse of its position; there is, however, no requirement on BT to publish separately audited accounts for BTE Spectrum, although we note that it does so for its apparatus supply business. In some instances, BTE Spectrum may not be at as great an advantage as the SPs feared: we note, for example, that, on the information we have seen, it has had similar problems to other SPs in acquiring lines. Some of the concerns of the SPs may also be alleviated as they become able to provide services on the other licensed networks, for access by BT customers. In particular it is hoped that BT and Mercury soon reach agreement as to the terms for interconnection of BT customers to services provided on the Mercury network.

6.54. However, the relations between BT and the SPs are not what we would hope to find between a supplier and its customers; in this industry, their interests should coincide closely. This is partly the result of BT's dual role as both supplier and competitor. Some of the SPs are indeed dependent on BT not only as network operator, but also for the equipment essential for the operation of their services.

6.55. The problems that have arisen between BT and the SPs would seem endemic in the dual role provided for in BT's licence, despite the provisions in the licence to safeguard competition. The evidence we have seen is not sufficient in the context of the current reference to justify a finding that the provision by BT of the reference services, by virtue of its role as network operator, operates against the public interest. It is, however, essential that the DGT should use his existing powers rigorously and speedily to investigate and if necessary remedy any alleged abuses by BT of its position; the SPs should be able to feel confident that the DGT will ensure effective competition in this way. Publication of separate audited accounts would provide some reassurance that BTE Spectrum was not being unfairly cross-subsidised by BT.

**Modifications to BT's licence**

6.56. In paragraph 6.36 we concluded that the provision by BT of chatline and message services, and the provision by BT of a telecommunication service to other persons enabling them to provide chatline and message services, operates or may be expected to operate against the public interest. We identified the resulting adverse effect. Although we have considered a number of other public interest issues, we have not found sufficient evidence at present of other grounds on which to conclude that the provision of the services operates or may be expected to operate against the public interest; some of these issues are, however, being examined further by the DGT, and we believe he has adequate powers to remedy any detriments he may find. We therefore have to consider whether the adverse effect identified in paragraph 6.36 could be remedied or prevented by modification of the conditions of the licence; and if so specify the modifications by which those effects could be remedied or prevented.

*The DGT's proposals*

6.57. As discussed in paragraph 6.3, the DGT proposed a licence modification in the case of chatline services, which would require the provision of such services only if a customer had 'contracted-in' to the service, and received an itemised bill for the use of the service.

6.58. The DGT, in his statement, acknowledged that the imposition of these requirements would be likely to lead to a cessation of chatline services, at least

until modern technology is more widely available. This is also the view of the various chatline providers to whom we have talked. We agree that adoption of these requirements could lead to the cessation of virtually all chatline services, although it is not inconceivable that a few services could continue to operate as 'clubs', available only to subscribers with payment by credit card. The costs of operating chatline services on such a basis would, however, be significantly above those of the present services; the demand for the services would be much reduced from their present levels; and their further development would be seriously inhibited. We do not believe that the adverse effects of chatline services are sufficient to justify the virtual cessation of the services.

6.59. The DGT made various suggestions for message services (see paragraph 6.4), including separation between information and entertainment services. We believe that it is not possible meaningfully to distinguish between information and entertainment services. The classification of particular services between information and entertainment is likely to be highly subjective: sport, for example, could be regarded as falling into either category; and many entertainment services could be presented as 'information'. For this reason alone, we believe that there would be considerable practical difficulties with the first two of the DGT's proposals set out in paragraph 6.4.

6.60. The second of the DGT's suggestions for message services would also impose a requirement for itemised billing and 'contracting-in' of entertainment services, as he has proposed for chatline services. As with chatline services, given current technology, these requirements would lead to the virtual cessation of most 'entertainment' services, however defined. We do not believe that the incidence of unauthorised use of the services is sufficient to justify such a course of action.

6.61. The DGT also suggested in his third proposal a possible licence requirement on BT to introduce call-barring facilities as soon as it is technically and economically feasible. We agree strongly with this proposal, but, as we discuss further below, believe that this requirement should extend beyond the provision only of call-barring, the need for which may not be appreciated by customers until problems of unauthorised use have occurred. We are also of the view that BT should do more to promote the availability of call-barring equipment at the customer's premises, at least until such facilities become available at the local exchange.

*The Commission's proposals*

6.62. With modernisation of the network, the technology will be available to remedy the main adverse effects of chatline and message services, but without jeopardising their economic viability, or depriving those BT customers who value these services of their use. We believe that it is essential that, as and when digital exchanges are introduced, facilities should be made available on the network that will give customers the information necessary to monitor the use made of the telephones for which they are responsible for paying the bill, and to control access to those services which they do not wish to be used.

6.63. BT plans to introduce itemised billing and call-barring, but is under no obligation to do so. We believe that the licence should be so amended as to empower the DGT to require BT to install the facilities, as it becomes technically and economically feasible to do so, to provide on request by the customer:

- (a) itemised billing of calls to PRS (possibly as part of an itemised bill for all calls by the customer);
- (b) notification within the billing period when bills exceed an amount specified by the customer or when the total cost of calls to PRS exceeds an amount specified by the DGT; and
- (c) barring of calls to PRS.

6.64. These recommendations are based on the principle of giving customers full control over the use made of their telephones. As digital technology is

introduced, it will also be possible, by suitable development of software, to provide the customer with an array of options on itemisation of his account, and notification of call costs, and an increasing degree of selectivity in applying call-barring to the access to PRS. Furthermore, it will become possible to provide the recipient of a call with the information about the line on which a call has originated. Transmission of Calling Line Identification across the network, based on digital technology, would provide an economic means of controlling access to individual services; its development will therefore be to the benefit of both customers and SPs. We believe therefore that BT's licence should be modified to empower the DGT to require BT to develop Calling Line Identification, and to provide facilities for Calling Line Identification across the network as and when it becomes economically and technically feasible to do so.

6.65. It will, however, be several years before the network technology is universally available to provide sufficient safeguards for the customer against unauthorised use of chatline and message services. In this interim period, we believe that further safeguards are necessary.

6.66. In the case of chatline services where the incidence of unauthorised use has been greatest, we believe that the adverse effects could best be remedied through adoption of a formal code of practice, based in part on those developed by a number of chatline operators (for example, that of ITCA, reproduced at Appendix 4.3). Such a code of practice could include, for example, provisions that services should not be targeted at under-18-year-olds; that the operators should actively attempt to prevent use by under-18-year-olds; that callers should initially be told the charge for the call, and be reminded of the cost every ten minutes; the operators should attempt to validate the identity of regular or high-cost users; that services should be actively monitored; that conversations should be recorded to allow investigation of complaints; and that the operators should fund a scheme to compensate customers and finance the fitting of call-barring equipment on customers' premises should procedures prove inadequate. Such a code of practice could also apply to 'one-on-one' services where, although we are unaware of any significant problems of unauthorised use to date, the risk of unauthorised use may be similar to that of chatline services. The code could be monitored and enforced by ICSTIS or a similar independent supervisory body preferably financed and appointed other than directly by BT (as we suggested in paragraph 6.51); BT would be empowered to withdraw facilities (at the request of the independent, supervisory body) from any SP which failed to observe the terms of the code. We believe that adoption of such a code could significantly reduce the extent of unauthorised use, particularly by teenage children, but without jeopardising the continuation and further development of the services.

6.67. BT told us that it was not opposed in principle to the introduction of a code of practice for chatline services, but believed that this could best be achieved by agreement between the DGT, BT and the SPs. It may be the case that all sides of the industry could reach agreement without a licence amendment being required; however, a licence amendment would give more authority to such a code of practice, and indeed to the regulatory body and to BT in enforcing it. We therefore recommend that the BT licence should be amended to require that BT only provide chatline services or provide telecommunication services to other persons for the provision of chatline services, by means of its public switched telephone network, if those services are provided according to a suitable code of practice; such a code would be negotiated between the DGT, BT (and other network operators) and the chatline providers. We believe that chatline services should continue until these arrangements have been established, at which point services that fail to comply with the code should be removed.

6.68. Message services are already subject to the ICSTIS Code of Practice. However, as we discussed in paragraphs 6.48 and 6.49, we believe that this code could be strengthened in a number of respects, particularly concerning the

advertising of the cost of calls, but without the necessity of a licence amendment. BT could also itself do more to warn telephone customers (for example, by leaflets with quarterly bills) of the risks of unauthorised use of both chatline and message services, and to inform customers of the availability of call-barring equipment from suppliers including BT. We believe that BT would be prepared to take this action without a formal licence amendment.

6.69. The interim measures we have outlined may be expected to alleviate, but not fully remove, the adverse effects of both chatline and message services. To do more, however, in this interim period would lead to the virtual cessation of the services, which we do not believe would be justified.

**Summary of conclusions  
and recommendations**

6.70. In summary, we have concluded that:

- (a) The provision by BT of chatline and message services by means of its public switched telephone network, and the provision by BT of a telecommunications service to other persons enabling them to provide chatline and message services by means of its public switched telephone network, operates or may be expected to operate against the public interest (paragraph 6.36).
- (b) The effect adverse to the public interest of these matters is that, due to the ease of access to the services and the terms of contract between BT and its customers, the customer has inadequate control over the types of services which can be accessed and over the costs or charges that may be incurred for the use of the services, which significantly impairs the value and quality of the telephone service to the customer.
- (c) This effect could be remedied or prevented by modifying the conditions of the licence to require BT:
  - (i) To install the facilities, as it becomes technically and economically feasible to do so, to provide on request by the customer: itemised billing of calls to PRS; notification within the standard billing period when bills exceed an amount specified by the customer or when the total cost of calls to premium rate services exceeds an amount specified by the DGT; barring of calls to PRS (paragraph 6.63).
  - (ii) To develop and provide facilities for conveying Calling Line Identification through the network (paragraph 6.64).
  - (iii) To provide chatline services, or to provide telecommunications services to other persons for the provision of chatline services, by means of its public switched telephone network only if these services are provided according to a code of practice (paragraph 6.67).

R G SMETHURST (*Chairman*)

K S CARMICHAEL

J E FLOOD

AUDREY M HEAD

Mr D R Fairbairn, being a member of the Group, agrees with these conclusions, but in a statement that follows sets out supplementary points which he wished to make.

S N BURBRIDGE (*Secretary*)

13 January 1989

## **Supplementary statement by D R Fairbairn**

1. The main findings show that the operation of chatlines and message services results in a public interest detriment in that the subscriber has inadequate control over access and the accountability is insufficient to show whether control is necessary or desirable. However, any of the solutions considered to correct the detriment requires the installation of more advanced digital equipment throughout the public switched network. This is not practicable for some years.

2. The recommendations of the other four members of the Group therefore propose palliative remedies, capable of being implemented now, which counter the most serious consequences without unduly inhibiting the growth of a valuable service. These are recommendations which I fully endorse as the most appropriate action to meet the interim requirement, and the further recommendations set out here are supplementary and supportive, addressing as they do the situation which will arise when the network has been fully modernised.

### **The long-term issue**

3. Chatlines are a special case of value added network services. The long-term issue is that of giving the user of such services adequate protection. The high potential for growth of this market makes it important to get the framework of control right. The need to anticipate the way in which effective control may in time be exercised arises because a failure to adopt the necessary standards and to install the appropriate equipment and software now will in the future inhibit and may prevent the future correction of the public interest detriment.

### **The future of VANS**

4. Value added network services are of potentially high economic significance as they enable transactions to take place between remote buyers and sellers of services where the value passing may, in any one transaction, be high relative to the cost of transmission, and the aggregate of many transactions may represent substantial sums of money. There is in consequence a special issue of accountability.

5. It is likely that the convergence of voice telephony, radio, satellite communications and computing will enable a massive increase in the market for services where the voice telephony network is a component in the chain between caller and service provider. Instead of the present very modest early use of such service, they may be expected in time to represent a significant proportion of the Gross National Product.

6. The problems associated with such a means of handling transactions may be expected to grow proportionately, so that remedies devised on the basis that a minor incidence of public detriment should be countered with measures which are accordingly modest may not stand the test of time. A more broadly conceived regulatory framework is required.

### **Establishing accountability**

7. The need to tackle these issues as early as possible, rather than waiting for the problems to escalate, is made clear by the nature of the difficulty BT has in accounting to its customers for the telephone services provided. The problem is inherited, and originates with the early view that local calls would be either non-chargeable or metered to provide only an aggregated bill, and that only operator-connected calls would need to be itemised. This view failed to envisage the future introduction of automatic switching for expensive services. The early problems arising from the fact that the network and all its operating systems were constructed on these principles were not serious. Today, however, BT is consequently prevented from accounting to its customers in any detail for the majority of the traffic it carries and, although working strenuously to correct the situation, will not be able to do so across the entire network until 1995 at the earliest.

8. If the system designers for the networks and the service providers do not make provision for effective accountability in the future, then there is a danger that history will repeat itself.

#### **Proposed guidelines on VANS accountability**

9. The solution proposed by the DGT in the case of chatlines calls for itemised billing to address the need to account to the subscriber, and contracting-in to provide access control. Further investigation of the problems facing the user show that there is a need also to be able to distinguish between the subscriber and the caller, so that the correct recipient of the charge may be validated.

10. It will also be desirable to consider the implications of the technical implementation of the guidelines in more detail at an early stage in order to enable the timely development and introduction of the necessary standards.

11. I therefore recommend that industry-wide guidelines for value added network services be established covering the three issues of accounting, validation and access.

12. There are four parties concerned:

#### *Customer*

the caller—the user of the service provided

the subscriber—the registered owner of the originating equipment

#### *Suppliers*

the network operator—the supplier of the transmission service

the service provider—the supplier of the value added element

13. The nature of VANS requires that we distinguish on the one hand between caller and subscriber, and on the other between network operator and service provider, whereas in traditional voice telephony no such distinction has been necessary.

#### **Accounting**

14. A record should be maintained of each VANS transaction with details of the subscriber, the cost, the date and the time of the transaction. Where billing is to be made to the caller rather than the subscriber the caller details should be held in lieu of those of the subscriber. This information may be held either by the network operator or the service provider; the obligation to maintain it should formally rest with the supplier billing the customer.

15. The information in these records should be available to customers, whether subscribers or callers, and subject to audit.

16. Charges above a threshold level (eg £5) should be defined as notifiable and subject to the validation procedures set out below. Lesser charges, which are not notifiable, should be itemised at billing but would be exempt from validation requirements, although subject to access control.

#### **Validation**

17. In the case of each notifiable charge incurred the supplier billing the customer should adopt one of the following procedures:

- (a) either the identity of the caller should be validated (eg by PIN number), in which case billing should be to the caller; or
- (b) the caller should be similarly identified as the subscriber or as having the authority of the subscriber, in which case billing is to the subscriber; or

- (c) the subscriber should have contracted with the provider to accept charges, either to an agreed level or without restriction, which are incurred on his equipment in respect of the service or category of services, without validation of user identity but with an agreed procedure for itemised notification of use of the service; or
- (d) if none of the above procedures is adopted, the subscriber should receive prompt notification of the details of the chargeable transaction, and be given the opportunity to restrict further access to the service.

### **Access**

18. A subscriber should have the ability to notify providers that he does not wish any service to be provided or charges to be incurred arising from use of his equipment by any caller, in which case he will then have no liability for charges made by the supplier so notified.

### **Technical implications**

19. In order to achieve compliance with these guidelines with a satisfactory level of automated implementation and thereby at an acceptable cost, it will be necessary to implement certain technical standards:

- (a) Calling line identification or, more generally, identification of the originating equipment should be inserted into the transmission message in a form decodable on receipt. In the case of fixed lines this may be done at the exchange but, for equipment not tied in to a fixed line insertion should be made by the equipment itself. The technology is currently implemented in Mercury telephones and in mobile telephones generally.
- (b) The calling line or subscriber identification should be capable of being carried across the network. This requires the appropriate software, in the form of the transmission protocol, to be adopted as a standard.
- (c) Originating equipment should be capable of generating for transmission the personal identification number of a caller to enable caller validation.
- (d) Equipment accessible to the billing supplier should be capable of decoding calling line and PIN information.

20. The technology already exists which can provide all of these facilities at low unit cost and with minimal impact upon user ease of access to the service. What does not yet exist is a set of agreed and implementable standards nor any requirement that may be introduced.

### **Timing**

21. The fact that implementation of standards across the industry will take many years makes it all the more important that early action is taken to establish the guidelines and derive from them the detailed standards to be followed. In consequence I recommend that the DGT takes the following action:

- announces his intention to establish accountability guidelines for value added network services;
- following a period of consultation of sufficient duration to achieve a broad industry consensus, publishes the guidelines;
- encourages the incorporation of the guidelines into industry codes of practice;
- promotes the development of formal standards to implement the technical requirements imposed by adherence to the guidelines; and
- sets a date at which conformance with the guidelines and the derived standards will become mandatory as a part of the licence. It is unlikely that a date earlier than 1995 will be practicable.

### **Public interest implications**

22. The consequence of pursuing such a policy will be to provide a framework for the active development of value added network services based on voice telephony in the knowledge that it will enable protection of the interest of users to be maintained on a par with that afforded by more traditional means of obtaining and paying for services. It will moreover establish a set of guidelines and procedures which may be readily extended to other forms of remote transaction not the subject of the present reference but having similar characteristics.

23. The network and service providers will be in a position to plan ahead and develop systems and especially software which may be expected to have a long usable life. The equipment manufacturers will similarly have a basis on which to design the implementing hardware.

24. The consequences of adopting only the short-term remedial measures at this time, without seeking to establish the long-term principles, will be to leave the services user in doubt as to the risks of making use of services for which there is less than adequate accountability, and will inhibit the growth of a market which offers a potential well beyond the limited array of services currently on offer. Both users and the British telecommunications industry will suffer as a consequence of a slow response to the need for effective standards, and the cost of remedial action at a later date will be substantially higher.

**D R FAIRBAIRN**