

**Designation of BT and Kingston as universal  
service providers, and the specific universal  
service conditions**

A statement and Notification issued by the Director  
General of Telecommunications on the implementation  
of the Universal Service Directive

22 July 2003

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## Summary

S.1 The Director General of Telecommunications ('the Director') has today published a Notification in which he proposes that BT and Kingston be designated as universal service providers and also proposes the specific universal service conditions to be imposed upon them. The Notification has been made in accordance with the Electronic Communications (Universal Service) Regulations 2003 ('the Universal Service Regulations'), and the proposals set out in the Notification will take effect from 25 July 2003.

S.2 This accompanying Statement explains why BT and Kingston have been so designated and why the specific conditions are necessary in order to ensure universal service, that is, the provision of basic electronic communications services to all end-users in the UK.

S.3 On 12 March 2003, the Director published a Notification setting out his proposals regarding the provision of universal service in the UK ('the First Notification'), together with a consultation paper in which he sought views on:

- the terms of the specific conditions, which, together with general conditions already consulted upon, would ensure universal service; and
- the electronic communications providers upon whom those specific conditions should be imposed.

S.4 The Director was required to consult upon these issues because of changes to the way in which electronic communications networks and services are regulated as a result of four new EC Communications Directives which came into force in April 2002 and which must be implemented throughout the EC by 25 July 2003. These new EC Directives are:

- Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ('the Access Directive');
- Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ('the Authorisation Directive');
- Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ('the Framework Directive'); and
- Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ('the Universal Service Directive').

S.5 This Statement:

- explains why the Director has designated BT and Kingston as the providers of universal service in the UK;
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- clarifies the specific universal service conditions that are to be imposed upon BT and Kingston, explaining any differences between the conditions previously consulted upon and the final versions;
  - includes Guidelines on 'functional Internet access'; and
  - summarises responses received to the consultation paper.
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## **Chapter 1**

### **Background**

#### **Provision of universal service in the UK**

1.1 Universal service is a concept fundamental to the regulation of telecoms in the UK. It means that basic telephone services should be available to everybody upon reasonable request and at an affordable price. These services are considered essential for everyone in current social and economic conditions, and risk not being provided under competition alone. Regulatory obligations have therefore been created to ensure their provision.

1.2 Up until 25 July 2003, anyone running a telecommunications system in the UK is required under the Telecommunications Act 1984 to do so under a telecoms licence. Universal service is ensured through conditions in the licences of telecommunications companies. These licence conditions reflect the requirements set out in Directive 98/10/EC on the application of open network provision to voice telephony and on universal service for telecommunications in a competitive environment ('the Revised Voice Telephony Directive' or 'the RVTD').

#### **The changing regulatory regime**

1.3 The four new EC Communications Directives (the Framework, Access, Authorisation and Universal Service Directives) require Member States to change the way electronic communications networks and services are regulated from 25 July 2003.

1.4 In the UK, most of the Telecommunications Act 1984 will be repealed and there will be no more telecoms licences. Licence conditions will be replaced by general conditions of entitlement and specific conditions, including specific conditions to ensure the provision of universal service.

1.5 The general conditions will apply to all communications providers, or all communications providers of a particular type eg all providers of public pay telephones.

1.6 In contrast, specific conditions can only be imposed on individual communications providers in particular circumstances, such as where a universal service designation has been made.

1.7 The Universal Service Directive replaces the RVTD in that it deals specifically with universal service and other end-user issues. Whilst the two Directives are similar in a number of respects, there are differences and the Director therefore needs to set new conditions which will achieve the objectives of the Universal Service Directive.

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## **Implementation of the EC Directives**

1.8 In the UK, it is intended to implement the four new EC Communications Directives through a new Communications Act, which received Royal Assent on 17 July 2003. The Communications Act is available at [www.hmso.gov.uk/acts/acts2003/20030021.pdf](http://www.hmso.gov.uk/acts/acts2003/20030021.pdf)

1.9 The Communications Act makes specific provision to enable Ofcom's functions to be carried out by the Director or the Secretary of State for a transitional period. As Ofcom are not yet ready to assume all of their functions, the Secretary of State has made an order that certain of the functions of Ofcom relating to the regulation of networks and services be carried out by the Director for the time being. For these reasons, this document and the Notification refer to the Director rather than Ofcom.

1.10 Prior to the finalisation of the Communications Act, it was recognised that the Director needed to undertake certain preparatory measures (such as notifying the European Commission of the designated new universal service providers) in order to ensure universal service provision from 25 July 2003. For this reason, a special Statutory Instrument, the Universal Service Regulations, was made to allow the Director to carry out a consultation on the designation of universal service providers for the new regime and the imposition of specific universal service conditions upon them (hence the First Notification and accompanying consultation). The Universal Service Regulations further allow the Director to confirm his proposals following consultation by publication of a further Notification (see the Notification set out at Annex A to this Statement). The proposals set out in the Notification at Annex A will automatically enter into force from 25 July 2003 by virtue of transitional provisions in the Communications Bill.

### **How universal service is ensured under the new regime**

1.11 Under the Communications Act, it is the duty of the Secretary of State to make an order (the 'Universal Service Order') setting out her position on the extent to which networks, services and facilities are to be provided throughout the UK as universal services. The final draft Universal Service Order is available at [www.communicationsbill.gov.uk/pdf/us\\_order\\_response\\_july.pdf](http://www.communicationsbill.gov.uk/pdf/us_order_response_july.pdf). The Communications Act allows the Director to set any such universal service conditions as he considers appropriate for securing compliance with the obligations set out in the Universal Service Order. Hence it is the Director's responsibility to ensure that universal service is in fact provided in the UK.

1.12 Some aspects of universal service will be ensured by means of general conditions imposed on certain groups of communications providers; for example all providers of publicly available telephone services ('PATS') must ensure that their end users can call '112' and '999', free of charge, to access the emergency services.

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1.13 The remaining aspects of universal service are to be ensured through specific conditions to be imposed upon individual communications providers; for example, only particular communications providers must ensure the adequate provision of public call boxes.

### **Of tel's consultation on the implementation of the Universal Service Directive**

1.14 Under the Universal Service Regulations, the Director published a the First Notification on 12 March 2003 which:

- identified whom he proposed to designate as a universal service provider and why;
- invited expressions of interest from other persons; and
- set out the specific conditions that he intended to impose.

1.15 At the same time, the Director published a consultation on the implementation of the Universal Service Directive ('the Consultation') in which he sought views on the matters set out in the First Notification.

1.16 Having carefully considered all the responses to the Consultation, the Director has today issued a further Notification (see Annex A), which proposes that BT and Kingston be designated as universal service providers with effect from 25 July 2003 and proposes the specific conditions to be imposed upon them. As discussed above, the proposals set out in the Notification at Annex A will automatically take effect from 25 July 2003 by virtue of specific transitional provisions relating to universal service in the Communications Act.

1.17 This Statement provides clarification of any changes between the draft conditions and the final versions and also clarifies why Of tel believes each condition is necessary in order to ensure that the Universal Service Directive is properly implemented in the UK.

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## Chapter 2

### Designation of BT and Kingston

#### Article 8 of the Universal Service Directive

2.1 As explained in Chapter 1, some of the requirements of the Universal Service Directive will be ensured by means of general conditions. However, in order to ensure that the Universal Service Directive is fully implemented in the UK, the Director needs to designate individual communications providers as universal service providers and impose specific conditions upon them.

2.2 Article 8 of the Universal Service Directive requires any such designation to be carried out by means of *“an efficient, objective, transparent and non-discriminatory designation mechanism, whereby no undertaking is a priori excluded from being designated”*.

#### Basis of designation in the UK

2.3 In the Consultation, the Director proposed that designation should be based upon the following criteria:

- whether the communications provider provides service to at least 100,000 served premises;
- the relative size of the communication provider’s business, including the extent, density and resilience of its communications network in the provision of publicly available telephone services in the particular area under consideration compared with other providers of such services in that same area;
- the relative capability of the communications provider to comply with any or all of the specific universal service conditions;
- the likely net cost to the communications provider of complying with any or all of the specific universal service conditions; and
- the financial stability of the communications provider.

2.4 Having considered the responses to the Consultation (discussed in Chapter 5) Of tel remains of the view that it is efficient, transparent, objective and non-discriminatory to use the above set of criteria as the basis for designation.

#### Designation of BT and Kingston

2.5 In the First Notification, the Director proposed designating British Telecommunications plc (‘BT’) and Kingston Communications (Hull) plc as universal service providers. In accordance with the requirements of the Universal Service Directive and the Universal Service Regulations, the Director also invited expressions of interest from any communications provider which wished to be

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designated in respect of any part of the UK as a universal service provider instead of BT or Kingston.

2.6 As no expressions of interest have been received, and on the basis of the criteria set out in paragraph 2.3, the Director has today confirmed his proposal that BT and Kingston be designated as universal service providers.

2.7 In respect of the definition of the 'Hull area' in the Notification, Oftel remains of the view that this definition ensures that the current regulatory regime, which sets different obligations in Hull as opposed to the rest of the UK, is maintained as transparently as possible. Oftel is currently working with the industry on creating a new definition for the new regime. However, this work has not been concluded in time for such a new definition to be included in the Notification. Oftel will consult on any change to the drafting of the definition of the 'Hull Area' in due course, although it is not anticipated that any such change would affect the geographical definition of the area in substance.

### **Funding of universal service**

2.8 As the Consultation explained, Oftel believes that, in the absence of effective competition in the retail markets, the cost of measures to protect vulnerable customers does not represent an unfair burden upon BT and Kingston. Any such cost needs to be offset against the benefits, which Oftel believes to be considerable, that will accrue to the brands through their position as universal service providers.

2.9 However, Oftel recognises that, as competition improves, the burden of universal service may increase and consideration may need to be given to the provision of funding, for example through cost sharing by communications providers.

2.10 A universal service fund might encourage interest in the provision of the services and facilities that comprise universal service, and communications providers may wish to be designated as universal service providers.

2.11 Oftel is recommending that Ofcom make a review of universal service one of its priorities. However, the issues are complex and thorough research will be required before any fundamental changes to the way in which universal service is ensured in the UK can be considered.

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## Chapter 3

### The specific conditions

3.1 The specific conditions that the Director proposes to impose upon BT and upon Kingston are set out in Parts 2 and 3 respectively of the Schedule to the Notification.

3.2 Kingston's conditions impose obligations upon it only in respect of the area defined as the 'Hull area'.

3.3 BT's conditions impose obligations upon it in respect of the UK minus the Hull area, with the exception of two of its conditions, which apply in respect of the whole of the UK.

3.4 These conditions ensure the proper implementation of the Universal Service Directive in the UK. They are also consistent with the matters set out in the Universal Service Order.

3.5 From 25 July 2003, the conditions will operate as universal service conditions under section 45(4) of the Communications Act.

3.6 Each of the specific conditions satisfies the test set out in the Communications Act in that it is objectively justifiable, not unduly discriminatory, proportionate and transparent. Further clarification is provided below in respect of each condition. Where the condition is different to the version proposed in the Consultation, this is also explained.

3.7 In finalising the specific conditions, Oftel has taken into account comments received in response to the Consultation. Chapter 5 summarises the key comments and sets out Oftel's response where appropriate. There is therefore some overlap between this chapter and Chapter 5.

#### **Set of conditions that the Director proposes should be applied to BT (see Part 2 of the Schedule to the Notification at Annex A):**

- Condition 1: Provision of telephony services on request
  - Condition 2: Schemes for consumers with special social needs
  - Condition 3: Provision of call box services
  - Condition 4: Provision of relay service for textphone users
  - Condition 5: Tariffs for universal services
  - Condition 6: Itemised billing
  - Condition 7: Maintenance and supply of a directory information database and directories
  - Condition 8: Quality of service
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**Set of conditions that the Director proposes should be applied to Kingston (see Part 3 of the Schedule to the Notification at Annex A):**

- Condition 1: Provision of telephony services on request
- Condition 2: Schemes for consumers with special social needs
- Condition 3: Provision of call box services
- Condition 4: Tariffs for universal services
- Condition 5: Itemised billing
- Condition 6: Quality of service

**Provision of telephony services upon request**

3.8 This condition requires the designated provider to meet all reasonable requests for a connection to the public telephone network at a fixed location and for access to publicly available telephone services at a fixed location.

3.9 The condition is objectively justifiable and proportionate in that it meets the requirements of Article 4 of the Universal Service Directive. It is also proportionate in that it imposes obligations on BT and Kingston only, as the designated universal service providers within their respective areas, such designation having been made in accordance with objective criteria set out in Chapter 2. This condition is, therefore, in Oftel's view, not unduly discriminatory. The Guidelines on functional Internet access will add further transparency to the operation of this condition.

3.10 The final condition is the same as that proposed in the Consultation, ie no changes have been made.

***End-to-end connectivity***

3.11 It is an important part of the basic consumer protection afforded by universal service that end-users can call all other end-users and access all publicly available telephone services, irrespective of network. Without such connectivity across networks, end-users could only speak with, or send data to, other end-users who were customers of the same communications provider, and would not have access to the full range of publicly available telephone services. This would reduce consumer choice and welfare.

3.12 As part of the requirement to meet all reasonable requests to provide access to publicly available telephone services, Oftel therefore expects BT and Kingston to ensure that their customers can make calls across networks. In interconnect terms, this means that BT and Kingston have to purchase 'call termination' services from other providers. Further details on this issue are set out in the guidance note *End-to-end connectivity* published by Oftel on 27 May 2003.

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***Reasonable request***

3.13 The question of whether a request is reasonable or not will be determined on a case by case basis. As stated in the Consultation, Oftel intends to issue draft guidance later this year on what comprises a 'reasonable request'.

***Uniform pricing***

3.14 The condition requires that telephony services are priced uniformly, irrespective of geographic location. This reflects the guidance on pricing contained in the Universal Service Order, which in turn reflects the provisions of the Universal Service Directive; Article 9(4) allows Member States to impose obligations to apply common tariffs throughout the territory.

3.15 Services are charged at the same price throughout the relevant area (in the case of Kingston, the Hull Area only, and in the case of BT, the whole of the UK apart from the Hull Area) even where there are differences in the cost of provision. Such pricing delivers the benefits of competitive price levels nationally, rather than in geographic areas where competition is strongest. It also ensures that telephony services are affordable in areas where the high costs of provision would otherwise disadvantage groups of customers.

3.16 This requirement applies to all types of telephony service, including those provided in respect of end-users with disabilities as required under the general conditions of entitlement. General Condition 15 requires all providers of publicly available telephone services to put certain measures in place to ensure that end-users with disabilities have equivalent access to such services.

3.17 Whilst the Director may consent to services not being uniformly priced, he would only do so in exceptional circumstances. There is also a strict consultation process that must be followed before consent can be granted.

***Functional Internet access***

3.18 The wording of the new specific condition is similar to that of the current licence condition. However, there is one significant difference: where the pre-25 July regulatory regime refers to a data speed of 2.4 kbit/s only, Article 4 of the Universal Service Directive requires the connection to allow 'functional Internet access'. The Commission does not define this term in the Universal Service Directive, instead allowing Member States discretion in their implementation of Article 4. The Government has similarly chosen not to define 'functional Internet access' in the Universal Service Order.

3.19 Oftel remains of the view that the approach set out in the Consultation is the most appropriate, ie that the specific condition should neither define 'functional Internet access' nor mandate a minimum data speed, (that is, the speed of the connection, not the speed at which data is downloaded). Technological, social and

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economic conditions may change over the next few years and it is important that the specific condition, in addition to being transparent, is flexible enough to accommodate such changes.

3.20 Instead, Oftel has today published Guidelines on functional Internet access ('the Guidelines'). It is clearly in the interests of end-users and designated providers that Oftel clarify how it interprets 'functional Internet access' at any given time. Draft guidelines were included in the Consultation and, in response to comments received, they have now been revised.

3.21 The Guidelines clarify the circumstances in which Oftel may consider that an end user is not getting functional Internet access, eg where the connection speed is below 28.8 kbit/s or where the line is fitted with a pair-gain device such as DACS. The Guidelines also set out – in greater detail than in the draft guidelines in the Consultation - the circumstances in which Oftel would expect a designated universal service provider to take remedial action. The Guidelines may be revised from time to time to reflect changes in prevailing conditions.

3.22 The Guidelines are not legally binding and do not fetter the Director's discretion as to future regulatory action. However, Oftel anticipates that they will be key in addressing complaints about, for example, low data speeds.

3.23 Chapter 4 discusses the Guidelines, and explains the background, in more detail.

### **Schemes for consumers with special social needs**

3.24 This condition requires the designated provider to make schemes available to help consumers who have difficulty affording telephone services.

3.25 One of the key themes of the Directive is that services need to be affordable for end-users, and this is reflected in the guidance on pricing set out in Article 4(a) of the Universal Service Order.

3.26 Imposition of this condition upon BT and Kingston is proportionate and non-discriminatory in that Article 9(2) of the Universal Service Directive allows designated providers to be required to provide special tariff options or packages to consumers to ensure that *"those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service"*.

3.27 The specific condition is also proportionate in that BT and Kingston currently have a very similar condition under their licences and therefore already provide such schemes.

3.28 Oftel believes that the specific condition is sufficiently transparent. The Director may make a direction as to certain necessary attributes of a scheme for the purposes of the condition, but only after due consultation.

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3.29 Oftel had intended to commence consulting upon a direction before 25 July 2003, but this will now happen later in the year. Under the current regulatory regime, BT and Kingston are required under their respective licences to ensure that schemes comply with guidelines agreed with Oftel. In order to comply with the new specific condition, Oftel expects BT and Kingston to continue to comply with those agreed guidelines until such time as they are replaced by a Direction. That is, on 25 July 2003 BT and Kingston must continue to provide the schemes that they currently make available.

3.30 One example of an existing scheme is BT's Light User Scheme (LUS). LUS involves a rebate upon line rental - the fewer calls the customer makes, the lower the line rental (down to a minimum line rental). To be on the LUS, the customer must either have had low recent bills or consider that future bills will be low.

3.31 The condition requires that telephony services provided in accordance with any scheme are provided on the basis of uniform prices, irrespective of geographic location. This has been explained in more detail in paragraph 3.15 above.

3.32 The condition has been amended to make clear that on 25 July 2003 there is no retrospective obligation upon BT and Kingston, requiring them to have already given the Director three months notice of schemes provided with effect from that date.

3.33 There has been a further minor amendment to clarify that notification of changes to existing schemes is required only where those changes are significant. For example, Oftel does not intend that, where BT makes changes to its standard prices, it must first provide three months notice of the resulting adjustments to LUS.

### **Provision of call box services**

3.34 This condition requires the designated provider to ensure that it meets the reasonable needs of end-users in the provision of public call boxes, ie public pay telephones on public land and to which the public has access at all times. Prices of call box services should be independent of geographic location (see paragraph 3.15 above).

3.35 The provision of public call boxes is important in terms of consumer protection and social and economic inclusion. The proposed condition is objectively justifiable and proportionate in that it fulfils the requirements of Article 6 of the Universal Service Directive.

3.36 This condition only imposes obligations on BT and Kingston, as the designated universal service providers within their respective areas, such designation having been made in accordance with objective criteria set out in Chapter 2. This condition is therefore not unduly discriminatory. It is also

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transparent in that the obligation to ensure the reasonable needs of end-users are met is clearly set out on the face of the condition.

3.37 The condition makes several references to the fact that a direction may be issued from time to time in order to set out in more detail the universal service obligations on providers of public call boxes. Paragraph 3.4 of the condition sets out the type of information that might be included in any such direction.

3.38 The Director has decided to issue a direction on the procedure to be followed by BT and Kingston, as designated universal service providers of public call boxes, regarding both the process to be followed prior to the removal or re-siting of a public call box or the cessation of any call box services, and on the matters to be taken into account in considering a request for the installation of new public call boxes received under paragraph 3.3 of the condition (the 'Direction'). Oftel recently consulted on a draft version of the Direction (see *Public Payphones – implementation of universal service obligations*, 15 April 2003, available at: [www.oftel.gov.uk/publications/consumer/2003/pcbddd0304.htm](http://www.oftel.gov.uk/publications/consumer/2003/pcbddd0304.htm)). Oftel intends to issue a statement summarising the conclusions to that consultation, and attaching the final version of the Direction, shortly.

3.39 The final version of this condition has been amended in two minor respects, in the light of the Director's intention to issue a separate direction setting out the procedure for removal and installation of public call boxes in more detail.

3.40 Firstly, paragraph 3.2 of the proposed condition provided that the designated universal service providers of public call boxes must obtain the written consent of certain local bodies where they proposed to remove or re-site the last public call box at a site. This provision has now been replaced by a simple reference to the need for BT/Kingston, where they propose to remove the last public call box at a site, to follow the procedure set out in any direction to be issued by the Director. This amendment improves the organisation of the obligations by keeping the text of this condition succinct while confining the detail of the procedure to the Direction; it also ensures that this condition does not duplicate the provisions of the Direction.

3.41 Secondly, Oftel's consultation on a draft version of the Direction included a proposal to define the term 'site' for the purposes of the procedure for removing or re-siting public call boxes (see Chapter 2 of Oftel's Public Payphones consultation document referred to above for further details). Following responses to that consultation, Oftel has concluded that the definition of a site should be '*an area within a walking distance of 100 metres of an existing public call box*'. The definition of 'site' has been added to the list of definitions at the beginning of the specific conditions.

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### **Tariffs for universal services**

3.42 Where an end-user has requested a service provided under a universal service obligation, this specific condition prevents designated providers from requiring the end-user to pay for any other service that he or she has not requested or is not necessary, for example by means of a bundled product comprising the requested service and some additional service.

3.43 The condition is objectively justifiable and proportionate, given that many end-users in the UK may have no choice but to use a designated provider's telephony services. It is required under Article 10(1) of the Universal Service Directive and section 68 (as amended) of the Communications Act.

3.44 The condition is required as a consequence of designation as a universal service provider. It therefore imposes obligations on BT and Kingston only and is not unduly discriminatory.

3.45 The final condition is different to the draft version in the Consultation. This reflects a late amendment to the Communications Bill. Both Kingston and BT were concerned that the original clause in the Bill, which referred to subsidisation, seemed to go beyond the wording of Article 10(1) of the Universal Service Directive. Oftel did not intend to interpret the condition as imposing any retail price controls in addition to those that might be properly applied, ie following a market review and a finding of market power, but agreed that there was scope for confusion. Having considered the matter further, the Government amended the relevant clause of the Communications Bill. This in turn meant that Oftel needed to revise the specific condition.

### **Itemised billing**

3.46 Under this condition, a designated provider is required to provide its subscribers with an itemised bill free of charge. Only a basic level of itemisation is required, and specific provision has been made for the exemption of pre-paid services and calls that are free of charge, including calls to helplines. The condition is therefore proportionate.

3.47 The condition is also sufficiently transparent. However, Oftel proposes to issue guidance later this year to clarify, amongst other matters, what constitutes a call that is 'free of charge'.

3.48 This condition is objectively justifiable and proportionate in that it fulfils the requirements of Article 10(2) of the Universal Service, namely that designated providers shall provide facilities to ensure that subscribers can monitor and control expenditure. As with the previous condition, it is a consequence of being designated as a universal service provider. It therefore imposes obligations on BT and Kingston only and is not unduly discriminatory.

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3.49 General Condition 12 is similar in that it requires all providers of publicly available telephone services (PATS) to provide, on request, a basic level of itemised billing. However, in contrast with designated providers who must do this free of charge, other PATS providers are permitted to make a reasonable charge.

3.50 Minor drafting changes have been made to the specific condition to ensure consistency with the wording of General Condition 12.

### **Quality of service**

3.51 The main purpose of this condition is the collection of information about a designated provider's performance in complying with its universal service obligations. One means of doing this is via the quality of service ('QoS') parameters set out in Annex III to the Universal Service Directive.

3.52 Publication of QoS information increases the transparency of a provider's performance, and helps to ensure that end-users are not suffering detriment with regard to service quality levels. The condition will satisfy end-users' demand for information and also help to establish whether the designated provider is meeting its universal service obligations.

3.53 The condition is therefore objectively justifiable and proportionate. Moreover, it is required under section 67(2) and (3) of the Communications Act, which in turn reflect the requirements of Article 11 of the Universal Service Directive.

3.54 The condition is required as a consequence of designation as a universal service provider, and imposes obligations on BT and Kingston only. It is therefore not unduly discriminatory. The condition refers to parameters clearly described in Annex III to the Universal Service Directive; the condition is therefore sufficiently transparent.

3.55 The parameters referred to in the condition are:

- supply time for initial connection;
- fault rate per access line;
- fault repair time; response times for operator services;
- response times for directory enquiry services;
- proportion of coin and card operated public pay telephones in working order; and
- bill correctness complaints.

3.56 Annex III of the Universal Service Directive also lists 'unsuccessful call ratio' and 'call set up time', but allows Member States not to require up-to-date information in respect of these two parameters. Oftel considers that it would be disproportionate to require designated providers to provide information regarding unsuccessful call ratio and call set up time.

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## **Additional obligations on BT**

3.57 The block of specific conditions that falls upon BT includes two additional conditions, described below:

### **Provision of relay service for textphone users**

3.58 This condition ensures the availability of a service offering text-voice translation services for textphone users. It imposes obligations upon BT in respect of the whole of the UK, including the Hull Area.

3.59 The condition is objectively justifiable and proportionate in that, taken together with General Condition 15, it fulfils the requirements of Article 7 of the Universal Service Directive, and ensures that end-users with disabilities enjoy equivalent access to publicly available telephone services.

3.60 Article 7 of the Universal Service Directive requires Member States to ensure access to and affordability of publicly available telephone services for end-users with disabilities, equivalent to that enjoyed by other end-users. The Universal Service Order also refers to the provision of relay services as a matter in respect of which the Director shall take specific measures in the interests of end-users with disabilities.

3.61 From 25 July 2003, all providers of publicly available telephone services will be required under General Condition 15, *Special Measures for end-users with disabilities*, to ensure that end-users with disabilities have equivalent access to such services as other end-users. However, the general condition on its own is not sufficient to ensure that Article 7 is properly implemented.

3.62 It is essential that a text relay service, offering text-voice translation, is available for textphone users and that it enjoys adequate and secure funding, not least because for some end-users it provides their only means of accessing the emergency services.

3.63 It is neither reasonable nor practicable to require each provider of publicly available telephone services directly to provide or fund a relay service, and there are benefits that accrue to providers and to end-users, both of economies of scale and of the concentration and accumulation of experience, in a commonly-provided service.

3.64 The condition retains the existing formula for the calculation of the financial limit capping the universal service provider's provision of funds for the operation of a relay service. It allows for a base figure of £12,368,748, to be raised annually in accordance with the preceding year's retail price inflation (RPI) percentage. This base figure of £12,368,748 has been derived from the base figure in BT's licence ie £10m for the year 1994-95, by using the same calculation process, ie applying RPI uplift for each year until the current year 2002-03.

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### **Cost recovery**

3.65 The Consultation proposed that, in contrast with BT's licence condition, BT should be allowed to recover some of its costs from other communications providers proportionate to the use that their own end-users make of it. Respondents to the Consultation asked Oftel to clarify how these cost-recovery arrangements would work in practice.

3.66 The funding arrangements up until 25 July 2003 are dictated by BT's licence condition, which does not allow it to recover the costs of funding the relay service (RNID Typetalk) from other parties. BT is therefore not able to use the new specific condition to recover any of the costs it has incurred in complying with its obligations under its licence.

3.67 However, BT is permitted to recover the costs it incurs with effect from 25 July 2003 related to providing other providers access to RNID Typetalk. Also, if BT makes improvements to the relay service, it may be able to recover some part of the associated costs.

3.68 BT must inform Oftel of the price it intends to charge other communications providers. Oftel will not approve the price but may investigate this price in the event of a dispute.

3.69 The specific condition has been amended to make it clear that BT is permitted to recover efficiently incurred costs that are directly attributable to the day-to-day operation of the service, rather than the historic costs of providing the service.

### **Other relay services**

3.70 Under the licensing regime, the only text service that has been determined by the Director as a relay service is 'RNID Typetalk'.

3.71 On 11 July 2003 Oftel consulted upon the Director's proposal to give approval to RNID Typetalk as a text relay service for the purpose of General Condition 15. A statement confirming the position will be issued before 25 July 2003.

3.72 The specific condition will therefore secure an amount of funding for the continuation of the Typetalk service. However, as Oftel has made clear in its various consultation papers and discussions with both consumer groups and industry, this does not preclude recognition of an alternative service. The Director would be prepared to consider any similar service for approval where its overall range of features is at least as good as what is currently on offer.

3.73 General Condition 15, which requires all providers of PATS to ensure their subscribers are able to access a relay service, now includes a period of grace for those communications providers for whom this is a new regulatory burden. They

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have until 31 December 2003 to comply. This also allows time for the industry, if they so wish, to come up with an alternative relay service to RNID Typetalk.

### **Supply of directories and databases for provision of directory services**

3.74 Under this condition, BT must keep an up-to-date database and provide directories and the contents of the database to certain other parties. The condition ensures that Articles 5 and 25 of the Universal Service directive are implemented in the UK in an efficient and effective manner, in that BT is required to act as a central dissemination point for the directory information of all subscribers to telephone services in the UK.

3.75 Under Article 5 of the Universal Service directive, all end-users should have access to at least one comprehensive directory and to at least one directory enquiry (DQ) service. Furthermore, under Article 25, providers of publicly available directories or DQ services must also have access to the information required to compile such directories.

3.76 General Condition 8, *Operator assistance, directories and directory enquiry facilities*, requires providers of publicly available telephone services ('PATS') to make a DQ service and directories available to their subscribers. General Condition 19, *Provision of directory information*, requires those communications providers who have been allocated telephone numbers to make available their DQ data to any person seeking to provide a publicly available directory or DQ service.

3.77 However, as the Consultation explained, these general conditions are not sufficient on their own to ensure that the obligations under Articles 5 and 25 of the Universal Service Directive are met efficiently and transparently. Significant duplication of effort would be required for PATS providers to ensure that any end-user could access a comprehensive DQ facility and to supply any end-user upon request with a comprehensive directory.

3.78 The Director is therefore imposing upon BT a specific universal service condition requiring it to provide the contents of its comprehensive DQ database to other DQ providers whether or not they are also providers of PATS. This specific condition also requires BT to provide directories to other communications providers who will be caught by General Condition 8 (but not to those persons who do not have this obligation).

3.79 This condition is the most proportionate and effective way to ensure (as required by Article 25) that providers of publicly available directories or DQ services are in practice able to access the information they need to compile directories and make services available.

3.80 The condition imposes obligations on BT only, because BT is in a unique position in that it already compiles a comprehensive DQ database – known as 'OSIS' – that it makes available to third parties, and it already possesses a

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significant proportion of the entries in that database as a result of its retail telephony business. It is therefore able to supply this essential input data in an efficient manner that does not involve DQ providers and UK industry as a whole in unnecessary duplication of effort.

3.81 This condition is therefore not unduly discriminatory. Oftel also believes that the condition is transparent.

3.82 The draft condition set out in the Consultation required BT to provide directories, the contents of the database and on-line access, including a search facility, to the database on terms that were fair, objective, cost-oriented and not unduly discriminatory.

3.83 The final version, however, has been amended so that it no longer refers to provision of on-line access to the database. This reflects Oftel's understanding that in fact only four parties make use of the search facility, known as 'Pathfinder', which BT currently provides. Pathfinder is a value-added search facility, which allows more than a simple search on an individual enquiry basis and provides access to a database more sophisticated than the OSIS database.

3.84 In the Consultation, Oftel took the view that smaller communications providers and DQ service providers would be disadvantaged if BT were not required to provide on-line access to its core database, and that this in turn would compromise the interests of end-users.

3.85 Having considered the matter further and, in light of the information about actual usage of Pathfinder, Oftel now takes the view that on-line access to the database is not essential in order to ensure that Articles 5 and 25 of the Universal Service Directive are properly and efficiently implemented.

3.86 The condition still requires BT to provide the contents of the database to third parties; those parties are then able to create their own search engines for the purpose of providing DQ information to their end-users. At the end of 2002, the market for directory enquiries was opened up to a wide range of companies, which are now able to offer new products and services in addition to the basic DQ service. There is no evidence that these new DQ service providers rely upon on-line access to BT's database in order to provide DQ information, ie that they are not in a position to buy the entire contents of the database and create their own search facility.

3.87 In its response to the Consultation, BT advised that it plans to continue to provide Pathfinder. If BT were to price the service anti-competitively, Oftel could either take action under the Competition Act or initiate a market review.

3.88 Where BT currently provides the service to a third party, BT should not withdraw it until the third party has had a reasonable opportunity to make alternative arrangements, for example, purchase of the OSIS database.

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3.89 Oftel believes that the amendment to the condition ensures that it is proportionate and not unduly discriminatory.

3.90 The draft condition referred to the database being updated "*at least once a year*". These words have now been deleted; as BT commented, it is essential that the database is continually updated.

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## Chapter 4

### Functional Internet access

#### How Oftel will ensure the provision of functional Internet access

4.1 The introduction of 'functional Internet access' is perhaps the single biggest change to the universal service regime, and certainly the one that has generated the most comment. It is a term that comes directly from the Universal Service Directive in the context of the requirement to meet all reasonable requests for connection to the public telephone network.

4.2 In the Consultation, Oftel proposed that, rather than mandating a specific connection speed on the face of the specific condition, *Provision of telephony services upon request*, guidelines should be issued to clarify how Oftel expects to interpret the requirement in the event of complaints about unsatisfactory Internet access. The Consultation therefore included draft 'Guidelines on functional Internet access' ('the Guidelines').

4.3 Having considered all the responses to the Consultation, Oftel has decided to continue with this approach. Whilst the Guidelines have been amended to ensure a balance between consumer expectations and any resulting burden upon designated providers, the key points remain the same:

- that Oftel believes end-users should reasonably be able to expect a benchmark connection speed of 28.8k bit/s; and
- that where an end-user is not getting optimal performance from his or her connection, remedial action – subject to it being reasonable – may be required.

4.4 The Consultation set out the background in detail – much of that background is repeated in this chapter. Oftel also explains the changes that it has made to the Guidelines.

#### What is 'functional Internet access?'

4.5 Up until 25 July 2003, universal service providers have been required by a licence condition to provide telephony services to any person upon reasonable request, including the ability to make and receive *calls "employing facsimile or voice band data up to 2400 bit/s"*. This licence condition reflects the requirements of the RVTD.

4.6 In contrast with the RVTD, Article 4 of the Universal Service Directive requires that the connection provided shall be capable of allowing end-users to make and receive communications:

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*“at data rates that are sufficient to permit functional Internet access, taking into account prevailing technologies used by the majority of subscribers and technological feasibility”.*

4.7 The Universal Service Directive does not define ‘functional Internet access’. Nor does it specify the data rates that are sufficient to permit such access. This allows varying conditions in Member States to be taken into account, including the possibility of provision of universal service using alternative technologies, such as wireless, particularly in countries where a fixed network may not be sufficiently ubiquitous to provide universal service.

4.8 In drafting the Directive, the Commission recognised the need to avoid technologically-specific language wherever possible and to allow Member States flexibility in interpretation, bearing in mind that data rates may be affected by factors other than the connection itself.

4.9 However, paragraph 8 of the recitals to the Directive provides useful clarification of the Commission’s line of thinking. Key elements of this paragraph are set out below:

- The Commission starts by stating that the requirement to provide connection to the public telephone network at a fixed location is *“limited to a single narrowband network connection...and does not extend to the Integrated Services Digital Network (ISDN)”*. It is therefore clear that the requirement to ensure functional Internet access is not talking about broadband or access to the ISDN.
  - There should be *“no constraints on the technical means by which the connection is provided, allowing for wired or wireless technologies”*.
  - The connection should be *“capable of supporting speech and data communications at rates sufficient for access to online services such as those provided via the public Internet”*.
  - The speed of Internet access experienced by a particular user may depend on factors additional to the connection itself, eg the Internet Service Provider or the given application for which the connection is being used. And the data rate that can be supported by the connection depends on the capabilities of the user’s terminal equipment as well as the connection itself. The Commission has therefore taken the view that *“it is not appropriate to mandate a specific data or bit rate at Community level”*.
  - A flexible approach is required so that Member States may take measures where necessary to ensure that connections are capable of supporting a data rate of 56 kbit/s but may also where relevant allow data rates below 56 kbit/s.
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- The Commission clearly intends that Member States should be able to take action where functional Internet access is not being provided: *“In specific cases where the connection... is clearly insufficient to support satisfactory Internet access, Member States should be able to require the connection to be brought up to the level enjoyed by the majority of subscribers so that it supports data rates sufficient for access to the Internet.”*

4.10 Oftel has decided that the specific condition implementing Article 4 should be flexible enough to be interpreted in a manner that reflects the prevailing technological, economic and social conditions.

4.11 However, Oftel recognises that:

- any person requesting connection from a designated provider probably wants to know what they may reasonably expect from that connection; and
- a designated provider should have some insight into how Oftel would expect to approach a complaint about a breach of the condition.

4.12 Oftel has therefore produced the Guidelines (see Annex B). Whilst these are not legally binding and do not fetter the Director’s discretion, they will be taken into account in addressing a complaint about, for example, unsatisfactory data rates. Each case will be dealt with on its merits and in pursuance of the requirements of the new regime, but the Guidelines will help to ensure consistency of approach and some degree of certainty for both end-users and designated providers.

### **Speed of the connection, not download speed**

4.13 The Guidelines refer to a benchmark connection speed of 28.8 kbit/s. Connection speed (or line speed) is not to be confused with the speed at which information is downloaded eg from a website.

4.14 The transmission capability of a line is most frequently expressed as a data rate, in bits per second (bit/s or bps) or sometimes bytes per second (Byte/s or Bps). One Byte is equal to 8 bits, so that a data rate of 3.6 kByte/s is equivalent to 28.8 kbit/s and a rate of 6.25 kByte/s is equivalent to 50 kbit/s. This different terminology can sometimes be confusing, giving the misleading impression that an end-user is experiencing lower speeds than is in fact the case.

4.15 The data rate reported, eg as a figure that pops up on the end-user’s computer screen, for a connection can also cause confusion. It could be any one of the following:

- the Data Terminal Equipment (DTE) speed. This is the rate at which the consumer’s computer and modem communicate.
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- the Data Communications Equipment (DCE) speed. This is the speed of data communications between the consumer's modem and the modem to which it is connected at the far end. This is the rate which most closely reflects the transmission rate of basic data through the designated operator's line.
- the download rate ie the rate at which the web page or document is being downloaded. When a document is sent between two points in a network, a proportion of the data actually sent is needed to set up and maintain the communications link. Therefore if a DCE of 56 kbit/s is achieved, not all of the 56 kbit of data sent each second contains information on the document. The amount of document data downloaded in that second is therefore less than 56 kbit, perhaps 50 kbit. A document download rate which might at first glance appear to be low (particularly if it is expressed in bytes rather than bits), may on further consideration reflect a connection speed from the designated operator that is sufficient for 'functional Internet access'.

### **Factors limiting data rates**

4.16 The maximum rate at which information can effectively be conveyed between a service provider (eg ISP, e-mail service provider, web page host, etc) and an end-user is limited by a number of factors:

- the capability of the service provider's terminal equipment;
- the capability of the end-user's terminal;
- the transmission capability of the networks connecting them together; and
- the transmission capability of the line serving the end-user; this is discussed in more detail below in the context of line sharing.

### **Data rates over the public telephone network**

4.17 For a communication service to be universally available, there needs to be a network which is available everywhere. Whilst leased lines and ADSL connections can support high bit rates, technical constraints mean that they are not available to all fixed locations. The requirement to support universal access to the Internet must therefore be met by the public telephone network.

4.18 Since 1999, most new PCs have been supplied with V.90 modems, which offer a maximum data rate of 56 kbit/s although in practice this speed is rarely, if ever, actually achieved. Equally, most ISPs have V.90 compatible 56 kbit/s ports at their end of the communications link.

4.19 There is therefore widespread availability of end-user terminal equipment which can support data transmission at 56 kbit/s. However, for narrowband access to the Internet, that is, access using a public telephone network, *the bandwidth of the access connection is now the crucial factor limiting transmission rates.*

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4.20 Until the RVTD came into force in 1998, there was no obligation on communications providers to ensure that the public telephone network was able to support any data transmission. Even so, the RVTD only imposed a data transmission rate that could easily be achieved on all public networks of the EU. This rate, 2.4 kbit/s, was far short of what could already be achieved in the UK and did not, of itself, provide any incentive to operators to offer Internet access over the public telephone network at rates demanded by end-users.

### **A benchmark speed**

4.21 As discussed above, the RVTD's requirement of a data speed of 2.4 kbit/s is to be superseded by the Universal Service Directive's reference to 'functional Internet access'. The key determinant of whether a connection permits functional Internet access is the speed at which data may be transmitted over that connection. Additionally, end-users experiencing low data speeds may not be getting the benefit of feature-rich content such as complex graphics and sound.

4.22 Of tel must balance consumer interests and reasonable expectations with the resulting burden upon the universal service provider. It has therefore decided that a flexible approach which allows individual circumstances and changing prevailing conditions to be taken into account is preferable to a mandatory minimum speed. This approach is achieved by the Guidelines, which refer to a benchmark connection speed.

### **28.8 kbit/s**

4.23 In line with its policy of appraising regulatory options, Of tel identified and analysed a range of possible data rates in the Consultation. This analysis is summarised in the table below:

#### ***Summary of options***

<b>Option</b>	<b>Line speed kbit/s</b>	<b>Key feature of option</b>
1	2.4	Far short of what it is achievable
2	24	Too slow, less than half of line's capability, won't meet end-user expectations
3	28.8	Functional Internet speed for end-users, minimal extra cost for providers, speed in practice likely to be higher once the barrier to achieving 28.8 kbit/s is removed
4	33.6	Guaranteeing this speed would entail additional costs for providers; potential end-user dissatisfaction as expectations of noticeably improved speed unlikely to be met
5	56	Significant extra cost for providers

4.24 In short, Oftel suggested that a minimum connection speed of 28.8 kbit/s achieved the right balance between the interests and reasonable expectations of end-users and the resulting burden upon designated providers.

4.25 Having considered the responses to the Consultation, Oftel remains of the view that 28.8 kbit/s is the most appropriate speed. However, the term '*minimum*' may be confusing (bearing in mind that no minimum connection speed has been mandated) and Oftel has therefore amended the Guidelines to refer to a '*benchmark*' connection speed.

### **Line sharing**

4.26 In very simple terms, line sharing, or line splitting, is a means of creating two separate telephone lines where previously there was only one. It is a practice used by communications providers where the demand for services by end-users exhausts the line plant initially provided.

4.27 Where the excess demand is small and localised, the lack of line plant for additional circuits has been overcome by the use of 'pair-gain' systems, such as the Digital Access Carrier System ('DACS') system employed by BT. These systems each provide a second voiceband channel ie one cable pair with a pair-gain system can support two separate telephone lines. Unlike the old 'shared-service' lines where only one of the two lines concerned could be used at any moment, all of the lines provided over a pair-gain system can be used simultaneously.

### **How line sharing affects functional Internet access**

4.28 Pair-gain systems were intended to overcome a shortage of line plant for voice communications, and whilst fit for the original intended purpose of providing extra voice channels, they restrict the achievable rate of data transmission. DACS, for example, cannot support maximum V.90 speeds. The achievable speed via DACS varies according to which model of DACS is used, but typical speeds seem to be around 24 kbit/s. This falls short of the benchmark speed of 28.8 kbit/s set out in the Guidelines.

4.29 A benchmark of 28.8 kbit/s would therefore require the removal of DACS in many cases and some other improvements to be made to existing line plant, eg increasing the number and quality of lines. In practice, once DACS is removed from a line, the connection will not only achieve 28.8 kbit/s, but will almost certainly exceed it. This is clearly beneficial to the end-user.

4.30 However, just over half of all DACS lines are used for voice calls only and this is perfectly acceptable, provided that the end-user does not subsequently want Internet access and complain of reduced speeds. The cost to the provider is therefore not the one-off cost of replacing all DACS lines in one fell swoop. Rather, the provider will need to have a programme of re-assigning lines responsibly

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between its customers to ensure that Internet users are not compromised by reduced speeds. Eventually, as more and more end-users want Internet access, there will come a point when swapping DACS lines between customers is no longer a solution to complaints about data speed, and the number of DACS lines will need to be reduced.

4.31 Some lines fitted with DACS may in fact achieve 28.8 kbit/s. However, Oftel believes that, in providing functional Internet access, designated providers should make reasonable efforts to ensure that *lines achieve optimum performance*, particularly where an end-user intends to use the line for Internet access. A line subject to pair-gain modification is not achieving optimum performance. Removal of a pair-gain device is straightforward and relatively inexpensive and, as mentioned above, is likely to result in line speeds of well over 28.8 kbit/s.

4.32 Oftel has made it clear in recent years that the practice of installing pair-gain devices such as DACS is not necessarily in the best interests of the end-user and needs to be carefully re-appraised.

4.33 Therefore, as well as addressing the question of a benchmark speed, the Guidelines set out the specific steps that Oftel considers providers should reasonably take where it transpires that an end-user who complains of unsatisfactory Internet access has a line fitted with a pair-gain device such as DACS. Oftel is also pleased to note BT's acknowledgement in its public response to the Consultation that *"Removal of DACS from lines used for Internet access by far has the most immediate impact on the customer experience in most cases..."*

#### **Other remedial action**

4.34 A balance needs to be struck between the reasonable expectations of end-users and the impact upon designated providers. The Guidelines have therefore been amended to clarify how Oftel believes that complaints about unsatisfactory Internet access should be handled.

4.35 Oftel recognises that there is a wide range of possible underlying causes of slow speeds. Some of these are easily remedied, eg by removing a DACS device, or by replacing the overhead wire connecting a telephone pole to an end-user's premises. Other problems with the network are more serious and resolving them would have serious resource implications for the provider eg replacement of a major cable.

4.36 For this reason, the Guidelines now clarify the circumstances where it may or may not be reasonable or proportionate to expect the provider to take remedial action on the basis of an individual complaint. Where the provider receives a certain number of complaints which are traced back to a particular piece of its network, depending on the size of the cable involved, it should either take action at the earliest reasonable opportunity to ensure functional Internet access or put in

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place a work programme to address the problem in the longer term. Ofitel would expect to be advised of any such work programme.

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## Chapter 5

### Responses to the consultation

5.1 The consultation sought comments on the proposals set out by the Director in the First Notification, that is, the proposed designation of BT and Kingston as providers of universal service and the draft specific conditions.

5.2 22 non-confidential responses were received from:

118866 Ltd; BT; Cable & Wireless, and other operators; Consumer Communications for England (CCE); Communications for Business (CfB); Communications Managers Association (CMA); Communication Workers Union (CWU); Advisory Committee on Telecommunications for Disabled and Elderly (DIEL); Freeserve; Mr BH Kelly; Kingston; Mencap; National Air Traffic Services (NATS); Northern Ireland Advisory Committee on Telecommunications (NIACT); Public Utilities Access Forum (PUAF); Royal National Institute of the Blind (RNIB); Royal National Institute for Deaf people (RNID); Scottish Advisory Committee on Telecommunications (SACOT); Scottish Executive; Telecommunications Action Group (TAG); Vodafone; Welsh Advisory Committee on Telecommunications (WACT).

5.3 These are all published on Oftel's website at:  
[www.oftel.gov.uk/publications/responses/2003/uni120303/index.htm](http://www.oftel.gov.uk/publications/responses/2003/uni120303/index.htm).  
Copies are also available upon request from Oftel's Research and Information Unit (phone: 020 7634 8761; e-mail: [infocent@oftel.gov.uk](mailto:infocent@oftel.gov.uk)).

5.4 Oftel has given each response to the Consultation proper consideration and, where appropriate, has either amended the conditions or provided clarification in the text of the Statement. Key views and concerns are summarised below, together with brief comments in response from Oftel.

#### Designation of BT and Kingston

5.5 The First Notification invited expressions of interest in being designated from other communications providers. None were received.

5.6 On the whole, respondents recognised that there were sound reasons for the Director's designation of BT and Kingston as universal service providers.

5.7 However, a number of respondents (BT, Kingston, Mencap, PUAF, SACOT, and WACT) stressed the need for a review of all aspects of universal service, including who should provide it. PUAF suggested that universal service could be broken down into separate parts on either a regional basis or a functional basis, eg one communications provider might ensure the adequate provision of public call boxes, another might be responsible for ensuring the provision of DQ services.

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*5.8 The question of who should be required to ensure universal service is closely tied to how it should be paid for. Oftel appreciates that there is a growing pressure for universal service to be reviewed and, whilst it is unable to commit Ofcom, Oftel is recommending to Ofcom that one of its priorities should be comprehensive review.*

## **Guidelines on functional Internet access**

### ***A benchmark connection speed of 28.8 kbit/s***

5.9 The Guidelines were the subject of much comment, most of it positive. Most of the respondents who expressed a view agreed that the benchmark speed of 28.8 kbit/s set out in the Guidelines was the most appropriate (CCE, CMA, Mencap, NATS, NIACT, PUA, SACOT and WACT). However, respondents also emphasised the need for this speed to be reviewed as prevailing technological, economic and social conditions change.

5.10 Oftel's position on pair-gain devices such as DACS, as set out in the Guidelines, was also welcomed, particularly by the Scottish Executive and the Advisory Committees. Freeserve commented that BT's expansion of its network through installing pair-gain devices was an impediment to the development of broadband in the affected areas.

### ***The need for Guidelines***

5.11 Some respondents were concerned that the Guidelines were not legally binding and felt that the speed of 28.8 kbit/s should be mandated. BT, on the other hand, argued that the market was already delivering a line speed in excess of 28.8 kbit/s and that the Guidelines were therefore not needed.

*5.12 Oftel believes that the obligation to ensure functional Internet access is clearly stated on the face of the specific condition. The Guidelines provide important interpretation but some flexibility of approach is essential.*

*5.13 Oftel is not persuaded by BT's arguments. It is hard to reconcile what has been, at least up until now, the widespread practice of installing DACS or other pair-gain devices with assertions that the market is in fact meeting customers' expectations and that regulatory intervention is not required.*

*5.14 Oftel also believes that the Guidelines are important to ensure consistency and transparency in addressing complaints about unsatisfactory Internet access.*

### ***BT's concerns about the cost implications***

5.15 BT was concerned that the Guidelines might be interpreted as imposing an 'open-ended' obligation upon it to make whatever improvements to its network

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might be needed to ensure functional Internet access, regardless of the resulting financial burden.

*5.16 Whilst the Guidelines do not fetter the Director's discretion in any way, reasonableness is key. Therefore, and in recognition of BT's particular concerns about the significant cost of major cable replacement, Oftel has amended the Guidelines to clarify the circumstances in which BT would be expected to take action to ensure functional Internet access.*

*5.17 Oftel remains of the view that, between them, the condition and the Guidelines achieve the right balance between the interests of end-users and the burden upon designated providers.*

### **Provision of telephony services on request**

5.18 Some concern was expressed that the condition includes provision for the Director to consent to services provided under the condition not being uniformly priced, that is, priced irrespective of geographic location.

*5.19 First of all, Oftel would point out that the explicit reference to uniform prices is a positive step forward. Whilst the principle has long been a key part of universal service in the UK, the licence conditions do not make explicit reference to uniform pricing; rather, Oftel has relied upon the prohibition of undue discrimination.*

*5.20 Secondly, it is important that the Director should have some freedom (albeit limited, as explained below) to allow designated providers to depart from uniform prices in certain specialised circumstances. This flexibility is in no way intended to prejudice those geographical areas where competition is less effective.*

*5.21 Moreover, the Director must follow a formal process before he is able to consent to non-uniform pricing. Amongst other things, he must be satisfied that consent is objectively justifiable, not unduly discriminatory, proportionate and transparent, and must allow a consultation period for at least one month. This should reassure interested parties, particularly rural communities, that consent would only be given in exceptional circumstances.*

### **Schemes for consumers with special social needs**

5.22 One comment received was that BT and Kingston do not promote the schemes they currently provide, and that awareness and take-up are therefore relatively low.

*5.23 This does appear to be the case. As part of Oftel's ongoing programme of research into consumers' use of telephone services, Oftel has recently looked at consumer awareness of BT's 'In Contact' scheme. This scheme offers low cost line rental and pre-pay call charges of 10 pence per minute. Oftel's research found*

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*that just over one in ten consumers facing cost barriers to getting a fixed line phone claimed to be aware of In Contact.*

*5.24 Oftel believes the question of raising consumer awareness of special schemes is one that should be considered in the context of any universal service review by Ofcom.*

## **Provision of call box services**

### ***A direction rather than guidelines***

5.25 One party asked why the specific condition does not refer to guidelines about the removal procedure, ie removal of the last call box in a 'site', as has been the case under the licence condition.

*5.26 The answer is that the specific condition allows the Director to make a direction. Oftel believes that a direction will give greater certainty and clarity than guidelines and also make the removal procedure more workable.*

### ***Definition of 'site'***

5.27 The Consultation raised the question of how a 'site' should be defined. Most respondents to the Consultation decided not to comment in any detail, but to wait until Oftel consulted specifically on a draft direction to be issued under the condition. That subsequent consultation took the view that a site should be defined in terms of walking distance to the nearest available public call box, and set out a number of options.

*5.28 Having considered all the responses, Oftel is defining a site as "an area within a walking distance of 100 metres of an existing Public Call Box".*

## **Provision of relay service for textphone users**

### ***The need for review***

5.29 DIEL, TAG and RNID stressed the need for a proper review of the way in which the relay service is funded, one reason being to separate control and management of the service from the funding obligations.

*5.30 Oftel understands these concerns and accepts that the matter needs review. However, as the Consultation made clear, this exercise, ie the implementation of the Universal Service Directive, is not a review of universal service. Oftel's priority has been to ensure that the provision of universal service in the UK, including the provision of special measures for end-users with disabilities, is not interrupted or otherwise compromised when the regulatory regime changes on 25 July 2003.*

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### **Access to a relay service**

5.31 Providers of mobile phone services have expressed concern that they are now caught by the requirement to ensure subscribers can access an approved relay service, ie RNID Typetalk. Their arguments are not discussed in detail here as they relate to General Condition 15, rather than the specific universal service condition. In brief, however, they claim that RNID Typetalk is an under-used service, even by fixed line customers, and that it is not proportionate or indeed helpful to end-users with hearing impairments to require communications providers to ensure access to RNID Typetalk.

*5.32 However, as touched upon in Chapter 3, the mobile industry is free to produce a suitable alternative to RNID Typetalk, provided it does so before the deadline for compliance of 31 December 2003.*

### **Cost recovery arrangements**

5.33 Respondents wanted clarification of the cost recovery arrangements. Vodafone and Cable & Wireless said that BT should only be permitted to recover its incremental costs from other communications providers, if indeed it should be permitted to recover any costs at all.

*5.34 Oftel has amended the specific condition to make it clear that BT is permitted to recover efficiently incurred costs that are directly attributable to the day-to-day operation of the service.*

*5.35 The funding arrangements up until 25 July 2003 are dictated by BT's licence condition, which does not allow it to recover the costs of funding the relay service (RNID Typetalk) from other parties. BT is therefore not able to use the new specific condition to recover any of the costs it has incurred in complying with its obligations under its licence.*

*5.36 However, BT is permitted to recover costs it incurs with effect from 25 July 2003 in providing other providers access to RNID Typetalk. Also, if BT makes improvements to the relay service, it may be able to recover some part of the associated costs.*

### **Tariffs for universal services**

5.37 Kingston and BT believed that, whilst the draft condition set out in the Consultation reflected the provisions of the Bill (section 65, now 68), the Bill itself did not correctly implement the Universal Service Directive in this particular respect. On a strict interpretation, it appeared to prevent any normal profits being generated by products and services provided under the universal service requirements. However, this sort of regulatory control may only be imposed following proper market review. The Government accepted that the relevant

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section of the Bill exceeded the scope of the Universal Service Directive and amended the Bill accordingly.

*5.38 Oftel has redrafted the condition to bring it in line with the amendment to the Communications Bill, and to ensure that it is proportionate and not unduly discriminatory.*

### **Itemised billing**

5.39 There were few comments on this condition. However, Mencap felt that Ofcom should consider itemised billing as an obligation to be imposed on all communications providers as part of any universal service review.

*5.40 Under the general conditions of entitlement, all providers of PATS must provide basic level of itemisation on request – they may either do this for free or at a reasonable charge. Oftel believes that this requirement, together with the specific condition requiring BT and Kingston to provide a basic level of itemised billing free of charge, is both sufficient to safeguard the interests of consumers and consistent with the terms of the EC Directives.*

### **Maintenance and supply of a directory information database and directories**

#### ***Why Oftel is imposing this condition on BT?***

5.41 BT argued that Oftel was exceeding the scope of the EC Directives by requiring it to provide directories, the contents of its subscriber database and on-line access to the database to certain other parties.

*5.42 As explained in Chapter 3, Oftel believes that the condition is required in order that Articles 5 and 25 of the Universal Service Directive are properly implemented. It is the most proportionate and effective way to ensure that providers of publicly available directories or DQ services are in practice able to access the information they need to compile directories and make services available.*

*5.43 Oftel's ability to impose the specific condition derives from section 67 of the Act, which allows Ofcom to "set any such universal service conditions as they consider appropriate for securing compliance with the obligations set out in the universal service order". The Universal Service Order requires that comprehensive directories and DQs are available to all end-users and the specific condition ensures that these obligations are met. However, as explained below, Oftel has decided that provision of on-line access to the central database is not necessary for implementation of the Universal Service Directive, and may in fact be disproportionate.*

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***On-line access, including a search facility***

5.44 BT's key concern was the requirement to provide on-line access, including a search facility, to its database. It advised that the product that it currently provides, known as Pathfinder, is not a simple search engine limited to the OSIS database. Rather, BT has invested resources in creating a sophisticated product which provides access to value added material such as cross-references and special lists.

5.45 On the other hand, a DQ service provider, 118866, commented that on-line access was essential. Whilst larger DQ service providers might be able to use OSIS to build their own subscriber databases, they were unlikely to offer access to those databases to smaller innovative service providers.

*5.46 The requirement to provide the contents of a database is proportionate in that BT already compiles a comprehensive DQ database 'OSIS' that it makes available to third parties, and it already possesses a significant proportion of the entries in that database as a result of its retail telephony business. In order to ensure that all end-users have access to comprehensive and up-to-date directory information, communications providers must be able obtain information from the central database.*

*5.47 However, having considered BT's response to the Consultation and other information to the effect that there are only four companies who make use of BT's search facility, Pathfinder, and also the fact that BT no longer has a monopoly on the provision of DQ services, Oftel has decided that there is no objective justification for requiring BT to provide on-line access to its database. There appears to be no reason why the four companies cannot simply buy the contents of the OSIS database and create their own search facility. Oftel notes, however, that BT's response advises that it plans to continue to provide Pathfinder.*

*5.48 Where BT provides Pathfinder to a third party, it should continue to do so until the third party has had a reasonable opportunity to make alternative arrangements, for example, purchase of the OSIS database. If BT were to price the service at an anti-competitive level, Oftel may take action under Competition Act or by means of a market review.*

***DQ service for end-users unable to use a phonebook***

5.49 The RNIB expressed concern that, whilst General Condition 15 requires all PATS providers to ensure access to a free directory enquiry (DQ) service for end-users unable to use a printed directory, there is no universal service obligation requiring anyone to provide such a service.

*5.50 BT currently operates a special DQ service ('the 195 service'), which it provides to its own customers who cannot use a phonebook and which it also makes available to other communications providers. Oftel has no reason to believe*

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*that BT would refuse to allow other providers to access the 195 service, not least because of the damaging publicity that would result. Oftel also expects that current arrangements will remain in place so as to ensure that these calls remain affordable. However, Oftel intends to keep this issue under review and may consider imposing specific obligations in this regard should they appear necessary in the future.*

### **Quality of service**

5.51 The RNIB argued that Oftel was required under the Universal Service Directive to develop quality of service and performance standards for services to disabled end-users, eg quality and timeliness of bills in alternative formats, success rate of calls to relay services.

*5.52 There is in fact no obligation under the Universal Service Directive upon Member States or national regulatory authorities to develop such parameters or standards, although the Directive encourages them to do so. If demand for this type of information is established and standards – at either a national or international level – are therefore developed, Oftel will consider whether to revisit the matter and to amend the specific condition to refer to such standards.*

5.53 Oftel has raised RNIB's concerns with the Telecoms Industry Forum for comparable performance indicators at a national level. It is now for the Forum to consider whether to take this forward.

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## **Annex A**

### **NOTIFICATION UNDER REGULATION 4(10) OF THE ELECTRONIC COMMUNICATIONS (UNIVERSAL SERVICE) REGULATIONS 2003**

#### **Proposals for the designation of universal service providers and the setting of conditions that the Director intends will be given effect upon the coming in to force of any enactment which implements the Universal Service Directive**

#### **WHEREAS**

(A) The Director General of Telecommunications ('the Director'), in accordance with Regulations 4(3) and (4) of the Electronic Communications (Universal Service) Regulations 2003 ('the Regulations'), made proposals for the designation of persons as universal service providers and the setting of conditions upon those persons by publication of a notification on 12 March 2003 ('the First Notification');

(B) The Director invited representations about any of the proposals set out in the First Notification and the consultation document accompanying the First Notification by 2 May 2003;

(C) The Director has considered every such representation made to him in respect of those proposals (and, for the avoidance of doubt, such representations did not contain an expression of interest from a person to be designated as a universal service provider instead of the persons stated in the First Notification);

(D) The Director therefore considers that it would not be appropriate to propose to designate another person as a universal provider instead of the persons stated in the First Notification;

#### **THEREFORE**

1. The Director, in accordance with regulation 4(10) of the Regulations, hereby sets out the proposals for the designation of persons as universal service providers and the setting of conditions on those persons, as he intends that effect would be given to the proposals upon the coming into force of any enactment (including an enactment contained in subordinate legislation) which implements the provisions of the Universal Service Directive to which the proposals relate.

2. The Director is proposing to designate the following persons as universal service providers:

- (a) British Telecommunications plc;
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- (b) Kingston Communications (Hull) plc.

3. The Director is proposing to set conditions on the persons referred to in paragraph 2 above as follows:

- (a) on British Telecommunications plc, conditions 1 to 8 as set out in Part 2 of the Schedule to this Notification;
- (b) on Kingston Communications (Hull) plc, conditions 1 to 6 as set out in Part 3 of the Schedule to this Notification.

4. The Director's reasons for making, and the effect of, the proposals set out in this Notification are contained in the statement published with this Notification.

5. In considering whether to make the proposals set out in this Notification, the Director has acted in accordance with the policy objectives and regulatory principles identified in Regulation 3 of the Regulations. The Director considers that the conditions set out in this Notification comply with, and are necessary for satisfying, the requirements identified in Regulation 4(12) of the Regulations.

6. Except as otherwise defined in this Notification, or in so far as the context otherwise requires, words or expressions used shall have the same meaning as in the Regulations.

**DAVID ALBERT EDMONDS**  
**DIRECTOR GENERAL OF TELECOMMUNICATIONS**

Dated: 21 July 2003

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## SCHEDULE

### **Conditions to be set on the persons identified in paragraph 2 of the Notification in accordance with paragraph 3 of the Notification**

#### **Part 1: Definitions and Interpretation of this Schedule**

1. In this Schedule, except in so far as the context otherwise requires –

“Act” means the Communications Act 2003;

“Apparatus” includes any equipment, machinery or device and any wire or cable and the casing or coating for any wire or cable;

“BT” means British Telecommunications plc;

“Call Box Services” means the repair and maintenance of Public Call Boxes, and the provision of Publicly Available Telephone Services to and from such Public Call Boxes;

“Communications Provider” means a person who provides an Electronic Communications Network or provides an Electronic Communications Service;

“Consumer” means any natural person who uses or requests a Public Electronic Communications Service for purposes which are outside his or her trade, business or profession;

“Content Service” means so much of any service as consists in one or both of the following:

(a) the provision of material with a view to its being comprised in signals conveyed by means of an Electronic Communications Network;

(b) the exercise of editorial control over the contents of signals conveyed by means of a such a network.

“Customers”, in relation to a Communications Provider, means the following (including any of them whose use or potential use of the Electronic Communications Network or Electronic Communications Service is for the purposes of, or in connection with, a business):

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(a) the persons to whom the network or service is provided in the course of any business carried on as such by the Communications Provider;

(b) the persons to whom the Communications Provider is seeking to secure that the network or service is so provided;

(c) the persons who wish to be so provided with the network or service, or who are likely to seek to become persons to whom the network or service is provided;

“Director” means the Director General of Telecommunications appointed under section 1 of the Telecommunications Act 1984;

“Directory” means a printed document containing Directory Information on Subscribers of Publicly Available Telephone Services in the United Kingdom which is made available to members of the public;

“Directory Information” means, in the case of a Directory, the name and address of the Subscriber and the Telephone Number assigned to the Subscriber for their use of Publicly Available Telephone Services and, in the case of a Directory Enquiry Facility, shall be either such a Telephone Number of the Subscriber or information that such a Telephone Number of the Subscriber may not be supplied;

“Directory Enquiry Facility” means Directory Information provided by means of a Public Telephone Network;

“Electronic Communication” means a communication for transmission by means of an Electronic Communications Network;

“Electronic Communications Network” means:

(a) a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description; and

(b) such of the following as are used, by the person providing the system and in association with it, for the conveyance of the signals-

(i) Apparatus comprised in the system;

(ii) Apparatus used for the switching or routing of the signals; and

(iii) software and stored data;

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"Electronic Communications Service" means any service consisting in, or having as its principal feature, the conveyance by means of an Electronic Communications Network of signals, except in so far as it is a Content Service;

"Emergency Organisation" means in respect of any locality:

(a) the relevant public police, fire, ambulance and coastguard services for that locality; and

(b) any other organisation, as directed from time to time by the Director as providing a vital service relating to the safety of life in emergencies;

"End-User", in relation to a Public Electronic Communications Service, means:

(a) a person who, otherwise than as a Communications Provider is a Customer of the provider of that service;

(b) a person who makes use of the service otherwise than as a Communications Provider; or

(c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the service;

"General Condition" means a condition set by the Director by publication of a notification on 22 July 2003 under section 48(1) of the Act for the purpose of setting general conditions (as defined in section 45(3) of the Act);

"Geographic Number" means a Telephone Number from a range of numbers in the National Telephone Numbering Plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the Network Termination Point of the Subscriber to whom the Telephone Number has been allocated;

"Hull Area" means the area defined as the 'Licensed Area' in the licence granted on 30 November 1987 by the Secretary of State under section 7 of the Telecommunications Act 1984 to Kingston upon Hull City Council and Kingston Communications (Hull) plc;

"Information Commissioner" means the Information Commissioner referred to in section 18(1) of the Freedom of Information Act 2000;

"Kingston" means Kingston Communications (Hull) plc;

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“National Telephone Numbering Plan” means a document published by the Director from time to time pursuant to section 56 of the Act;

“Network Termination Point” means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber;

“Non-geographic Number” means a Telephone Number from a range of numbers in the National Telephone Numbering Plan designated for allocation to End-Users, the digit structure of which contains no geographic significance for routing calls;

“Publicly Available Telephone Service” means a service available to the public for originating and receiving national and international calls and access to Emergency Organisations through a number or numbers in a national or international telephone numbering plan, and in addition may, where relevant, include one or more of the following services: the provision of operator assistance services, Directory Enquiry Facilities, Directories, provision of Public Pay Telephones, provision of service under special terms, provision of specific facilities for End-Users with disabilities or with special social needs and/or the provision of non-geographic services;

“Public Call Box” means a Public Pay Telephone which is permanently installed on public land and to which the public has access at all times.

“Public Electronic Communications Network” means an Electronic Communications Network provided wholly or mainly for the purpose of making Electronic Communications Services available to members of the public;

“Public Electronic Communications Service” means any Electronic Communications Service that is provided so as to be available for use by members of the public;

“Public Pay Telephone” means a telephone available to the general public, for the use of which the means of payment may include coins and/or credit/debit cards and/or pre-payment cards, including cards for use with dialling codes;

“Public Telephone Network” means an Electronic Communications Network which is used to provide Publicly Available Telephone Services; it supports the transfer between Network Termination Points of speech communications, and also other forms of communication, such as facsimile and data;

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“Relay Service” means any service which:

(a) provides facilities for the receipt and translation of voice messages into text and the conveyance of that text to the terminal of customers of any provider of Publicly Available Telephone Services and vice versa, and

(b) has been approved by the Director to be a text relay service for the purposes of General Condition 15;

“Relevant Code of Practice” means the Code of Practice on Telecommunications Directory Information Covering the Fair Processing of Personal Data published by the Data Protection Registrar on 21 December 1998, including any amendments, updates or replacements to that code of practice published by the Information Commissioner from time to time;

“Relevant Data Protection Legislation” means the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999;

“Retail Prices Index” means the index of retail prices compiled by Her Majesty’s Government in respect of all items;

“Site”, in relation to a Public Call Box, means any area within a walking distance of 100 metres from that Public Call Box;

“Subscriber” means any person who is party to a contract with a provider of Public Electronic Communications Services for the supply of such services;

“Telephone Number” means, subject to any order of the Secretary of State pursuant to section 56(7) of the Act, any number, including data of any description, that is used (whether or not in connection with telephony) for any one or more of the following purposes:

(a) identifying the destination for, or recipient of, an Electronic Communication;

(b) identifying the origin, or sender, of an Electronic Communication;

(c) identifying the route for any Electronic Communication;

(d) identifying the source from which any Electronic Communication or Electronic Communications Service may be obtained or accessed;

(e) selecting the service that is to be obtained or accessed, or any required elements or characteristics of that service; or

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(f) identifying the Communications Provider by means of whose network or service any Electronic Communication is to be transmitted, or treated as transmitted;

“Telephony Services” means either or both a single narrowband connection at a fixed location to the Public Telephone Network and access to Publicly Available Telephone Services;

“Textphone” means an integrated terminal incorporating an alphanumeric keyboard and a means of displaying text, intended for connection to the Public Telephone Network for the sole or primary purpose of supporting live telephone conversations between two or more users;

“UK” means the United Kingdom;

“Universal Service Condition” means a condition set out in this Schedule; and

“Universal Service Directive” means Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users’ rights relating to electronic communications networks and services.

2. Except insofar as the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act.
  3. The Interpretation Act 1978 shall apply as if each of the Universal Service Conditions were an Act of Parliament.
  4. Headings and titles shall be disregarded.
  5. Expressions cognate with those referred to in this Schedule shall be construed accordingly.
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## **Part 2: Proposed conditions for British Telecommunications plc**

### Condition 1: Provision of telephony services on request

1.1 At the reasonable request of any End-user, BT shall provide Telephony Services, including the ability to make and receive calls employing facsimile and data communications, at data rates that are sufficient to permit functional internet access, to that End-user at any place in the UK except for the Hull Area, and BT shall ensure that its Electronic Communications Networks are installed, kept installed and run for those purposes.

1.2 Unless the Director consents otherwise, BT shall provide the services referred to in paragraph 1.1 on the basis of uniform prices throughout the UK except for the Hull Area.

### Condition 2: Schemes for consumers with special social needs

2.1 BT shall make available from 25 July 2003 and thereafter continue to make available to Consumers in the UK except for the Hull Area who request Telephony Services, one or more schemes the effect of which would be to assist Consumers who have difficulty affording telephone services including, in particular, Consumers on low incomes or with special social needs (a 'scheme'). Each such scheme shall comply with any direction made by the Director under paragraph 2.2.

2.2 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying, amongst other things:

- (a) the requirements to be met by a scheme;
- (b) the criteria to be applied by BT in deciding which of its Consumers are entitled to the benefits of a scheme; and/or
- (c) the date of the introduction of a scheme.

2.3 Unless the Director consents otherwise, where BT proposes to introduce a new scheme (which, for the avoidance of doubt, excludes a scheme made available from 25 July 2003), or proposes to amend an existing scheme to a significant extent, BT shall not bring that new scheme or amendment into effect unless it has provided written notice to the Director of its proposals at least three months in advance.

2.4 BT shall prepare and publish information describing each scheme for the benefit of Consumers within two weeks of the introduction of any such new scheme or any such amendment to an existing scheme. Publication of such information shall be effected by:

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- (a) sending a copy of such information to any person who may reasonably request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by BT.

2.5 Unless the Director consents otherwise, BT shall ensure that Telephony Services provided in accordance with any scheme under this Universal Service Condition are provided on the basis of uniform prices throughout the UK except for the Hull Area.

### Condition 3: Provision of call box services

3.1 BT shall ensure the adequate provision of Public Call Boxes and Call Box Services throughout the UK (excluding the Hull Area) in order to meet the reasonable needs of End-Users in terms of geographical coverage, the number of Public Call Boxes and the quality of Call Box Services, and in accordance with any relevant direction made under paragraph 3.4.

3.2 Where BT proposes to remove or re-site any of its Public Call Boxes, and/or cease to provide Call Box Services, where such removal, re-siting or cessation of provision would result in the complete removal of Public Call Boxes and/or Call Box Services from a Site, BT may only do so in accordance with any relevant direction made under paragraph 3.4.

3.3 Where BT has received a request for the provision of a new Public Call Box and related Call Box Services in order to meet the reasonable needs of a local community, BT shall consider such a request in accordance with any criteria set out in any relevant direction made under paragraph 3.4.

3.4 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying:

- (a) the geographical coverage of Public Call Boxes, the number of Public Call Boxes and the quality of Call Box Services required to meet the reasonable needs of End-Users;
  - (b) the process to be followed prior to the removal or re-siting of a Public Call Box or the cessation of any Call Box Services;
  - (c) the matters to be taken into account in considering a request received under paragraph 3.3; or
  - (d) any other matter relating to BT's obligations under paragraphs 3.1, 3.2 and 3.3.
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3.5 Unless the Director consents otherwise, BT shall provide Call Box Services on the basis of uniform prices throughout the UK except for the Hull Area.

Condition 4: Provision of Relay Service for Textphone Users

4.1 Subject to paragraph 4.3 and the financial limits set in accordance with paragraph 4.4, BT shall provide the funds for the operation by a person or body (“the relay service provider”) of a Relay Service (“the service”) for all End-users of Publicly Available Telephone Services who need to use Textphones because of their disabilities, whether End-users of BT or of any other Communications Provider.

4.2 BT shall enter into an arrangement with the relay service provider on such terms and conditions as they both consider to be appropriate.

4.3 Nothing in this Universal Service Condition shall be construed so as to:

- (a) require BT to provide or provide funds for any Textphones or other Apparatus on the End-user's side of the Network Termination Point; or
- (b) prevent BT from recovering part of the value of any funds provided in accordance with paragraph 4.1 from:
  - (i) any of its End-users accessing the service, subject to paragraph 15.3 of General Condition 15; and
  - (ii) any other Communications Provider requesting access to the Service for the purpose of enabling that Communications Provider to comply with paragraph 15.3 of General Condition 15 in respect of its own End-users;

as long as the terms and conditions offered by BT for such access are fair, not unduly discriminatory, based on efficiently incurred costs that are directly attributable to the day-to-day operation of the service, and do not oblige any such End-user or Communications Provider to pay for facilities or services which are not necessary or not requested.

4.4 In the absence of contrary agreement between the Director and BT the financial limit applicable to each 12 month period beginning from 25 July 2003 shall be:

- (a) for the first 12 month period, £12,368,748, and
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- (b) for each 12 month period thereafter, the successive amounts produced by increasing that sum year by year (that is to say, cumulatively) by the percentage equal to the amount of the change in the Retail Prices Index during each previous yearly period.

#### Condition 5: Tariffs for Universal Services

5.1 BT shall ensure that the terms upon which services or facilities are provided in accordance with a Universal Service Condition to a Subscriber or End-user do not require that Subscriber or End-user:

- (a) to pay for an unnecessary additional service; or
- (b) to pay, in respect of anything provided in accordance with a Universal Service Condition, any amount that is attributable to the provision to that Subscriber or End-user of an unnecessary additional service.

5.2 For the purposes of paragraph 5.1, references, in relation to a Subscriber or End-user, to an unnecessary additional service are references to anything the provision of which:

- (a) that Subscriber or End-user has to accept by reason of his being provided, on request, with a service or facility in accordance with a Universal Service Condition ('the requested service'); and
- (b) is not necessary for the purpose of providing that Subscriber or End-user with the requested service.

5.3 For the purposes of paragraphs 5.1 and 5.2, references to providing a Subscriber or End-user with anything include references to making it available or supplying it to that Subscriber or End-user.

#### Condition 6: Itemised billing

6.1 BT shall provide to each of its Subscribers, except to the extent that a Subscriber has agreed or requested otherwise, a basic level of itemised billing at no extra charge to the Subscriber. BT shall ensure that each itemised bill shows a sufficient level of detail to allow the Subscriber to:

- (a) verify and control the charges incurred by the Subscriber in using a Public Telephone Network and/ or related Publicly Available Telephone Services; and
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- (b) adequately monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over their bills.

6.2 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying the basic level of itemised billing to be provided by BT in accordance with paragraph 6.1.

6.3 BT may offer additional levels of detail to each of its Subscribers at reasonable tariffs or at no extra charge.

6.4 BT shall ensure that calls which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.

6.5 BT shall not be subject to this Universal Service Condition in respect of any Subscriber where:

- (a) it provides Publicly Available Telephone Services to the Subscriber on a pre-paid basis; and
- (b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.

#### Condition 7: Maintenance and supply of a Directory Information database and Directories

7.1 BT shall maintain a database containing Directory Information for all Subscribers who have been allocated Telephone Numbers by any Communications Provider ('the database'). BT shall ensure that the database is updated on a regular basis.

7.2 BT shall, in accordance with paragraphs 7.3 and 7.4 below, and on request, make available:

- (a) to any Communications Provider subject to paragraph 8.2 of General Condition 8 for the purpose of allowing that Communications Provider to comply with that paragraph, such Directories as BT compiles which comply with the requirements of that General Condition;
- (b) to any person seeking to provide publicly available Directory Enquiry Facilities and/or Directories, the contents of the database, in machine readable form.

7.3 BT shall supply the items in sub-paragraph (a) and (b) of paragraph 7.2

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above at the reasonable request of the person requesting such items. Without prejudice to the generality of the foregoing, BT may refuse to supply such items if:

- (a) the person requesting such items does not undertake to process the data or information contained in them in accordance with any Relevant Code of Practice, and/or
- (b) BT has reasonable grounds to believe that the person requesting such items will not comply with Relevant Data Protection Legislation.

7.4 BT shall supply the items in sub-paragraph (a) and (b) of paragraph 7.2 above on terms which are fair, objective, cost oriented and not unduly discriminatory, and in a format which is agreed between BT and the person requesting the information. Where no such agreement is reached, the Director may determine the format to be applied to the information in accordance with his dispute resolution functions.

7.5 In complying with the obligations set out in paragraphs 7.1 to 7.4 above, BT shall:

- (a) not unduly discriminate in the treatment of data or information supplied to it by other persons; and
- (b) have due regard, in such manner as is appropriate, to any Subscriber who has expressed opposition to inclusion of Directory Information about that Subscriber in a Directory or as part of a Directory Enquiry Facility.

7.6 This Universal Service Condition applies subject to the requirements of Relevant Data Protection Legislation.

#### Condition 8: Quality of Service

8.1 BT shall, on 31 December 2003 and thereafter every six months, publish information with respect to its performance in complying with Universal Service Conditions 1, 2, 3, 4 and 7 in accordance with the quality of service parameters, definitions and measurement methods referred to in Annex III to the Universal Service Directive (except for those relating to unsuccessful call ratio and call set up time), and any additional standards and/or requirements set out in a direction under paragraph 8.3.

8.2 Publication of the information required under paragraph 8.1 shall be effected by:

- (a) sending a copy of such information to the Director;
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- (b) placing a copy of such information on any relevant website operated or controlled by BT; and
- (c) sending a copy of such information or such parts thereof to any person who may request such a copy.

8.3 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying:

- (a) additional quality of service standards to be used to measure BT's performance in complying with Universal Service Conditions 1, 2, 3, 4 and 7; and
  - (b) additional requirements with respect to the form and content of the information to be published in accordance with paragraph 8.1.
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### **Part 3: Proposed Conditions for Kingston Communications plc**

#### Condition 1: Provision of telephony services on request

1.1 At the reasonable request of any End-user, Kingston shall provide Telephony Services, including the ability to make and receive calls employing facsimile and data communications, at data rates that are sufficient to permit functional internet access, to that End-user at any place in the Hull Area, and Kingston shall ensure that its Electronic Communications Networks are installed, kept installed and run for those purposes.

1.2 Unless the Director consents otherwise, Kingston shall provide the services referred to in paragraph 1.1 on the basis of uniform prices throughout the Hull Area.

#### Condition 2: Schemes for consumers with special social needs

2.1 Kingston shall make available from 25 July 2003 and thereafter continue to make available to Consumers in the Hull Area who request Telephony Services, one or more schemes the effect of which would be to assist Consumers who have difficulty affording telephone services including, in particular, Consumers on low incomes or with special social needs (a 'scheme'). Each such scheme shall comply with any direction made by the Director under paragraph 2.2.

2.2 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying, amongst other things:

- (a) the requirements to be met by a scheme;
- (b) the criteria to be applied by Kingston in deciding which of its Consumers are entitled to the benefits of a scheme; and/or
- (c) the date of the introduction of a scheme.

2.3 Unless the Director consents otherwise, where Kingston proposes to introduce a new scheme (which, for the avoidance of doubt, excludes a scheme made available from 25 July 2003), or proposes to amend an existing scheme to a significant extent, Kingston shall not bring that new scheme or amendment into effect unless it has provided written notice to the Director of its proposals at least three months in advance.

2.4 Kingston shall prepare and publish information describing each scheme for the benefit of Consumers within two weeks of the introduction of any such new scheme or any such amendment to an existing scheme. Publication of such information shall be effected by:

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- (a) sending a copy of such information to any person who may reasonably request such a copy; and
- (b) placing a copy of such information on any relevant website operated or controlled by Kingston.

2.5 Unless the Director consents otherwise, Kingston shall ensure that Telephony Services provided in accordance with any scheme under this Universal Service Condition are provided on the basis of uniform prices throughout the Hull Area.

### Condition 3: Provision of call box services

3.1 Kingston shall ensure the adequate provision of Public Call Boxes and Call Box Services throughout the Hull Area in order to meet the reasonable needs of End-Users in terms of geographical coverage, the number of Public Call Boxes and the quality of Call Box Services, and in accordance with any relevant direction made under paragraph 3.4.

3.2 Where Kingston proposes to remove or re-site any of its Public Call Boxes, and/or cease to provide Call Box Services, where such removal, re-siting or cessation of provision would result in the complete removal of Public Call Boxes and/or Call Box Services from a Site, Kingston may only do so in accordance with any relevant direction made under paragraph 3.4.

3.3 Where Kingston has received a request for the provision of a new Public Call Box and related Call Box Services in order to meet the reasonable needs of a local community, Kingston shall consider such a request in accordance with any criteria set out in any relevant direction made under paragraph 3.4.

3.4 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying:

- (a) the geographical coverage of Public Call Boxes, the number of Public Call Boxes and the quality of Call Box Services required to meet the reasonable needs of End-Users;
  - (b) the process to be followed prior to the removal or re-siting of a Public Call Box or the cessation of any Call Box Services;
  - (c) the matters to be taken into account in considering a request received under paragraph 3.3; or
  - (d) any other matter relating to Kingston's obligations under paragraphs 3.1, 3.2 and 3.3.
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3.5 Unless the Director consents otherwise, Kingston shall provide Call Box Services on the basis of uniform prices throughout the Hull Area.

#### Condition 4: Tariffs for Universal Services

4.1 Kingston shall ensure that the terms upon which services or facilities are provided in accordance with a Universal Service Condition to a Subscriber or End-user do not require that Subscriber or End-user:

- (a) to pay for an unnecessary additional service; or
- (b) to pay, in respect of anything provided in accordance with a Universal Service Condition, any amount that is attributable to the provision to that Subscriber or End-user of an unnecessary additional service.

4.2 For the purposes of paragraph 4.1, references, in relation to a Subscriber or End-user, to an unnecessary additional service are references to anything the provision of which:

- (a) that Subscriber or End-user has to accept by reason of his being provided, on request, with a service or facility in accordance with a Universal Service Condition ('the requested service'); and
- (b) is not necessary for the purpose of providing that Subscriber or End-user with the requested service.

4.3 For the purposes of paragraphs 4.1 and 4.2, references to providing a Subscriber or End-user with anything include references to making it available or supplying it to that Subscriber or End-user.

#### Condition 5: Itemised billing

5.1 Kingston shall provide to each of its Subscribers, except to the extent that a Subscriber has agreed or requested otherwise, a basic level of itemised billing at no extra charge to the Subscriber. Kingston shall ensure that each itemised bill shows a sufficient level of detail to allow the Subscriber to:

- (a) verify and control the charges incurred by the Subscriber in using a Public Telephone Network and/ or related Publicly Available Telephone Services; and
  - (b) adequately monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over their bills.
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5.2 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying the basic level of itemised billing to be provided by Kingston in accordance with paragraph 5.1.

5.3 Kingston may offer additional levels of detail to each of its Subscribers at reasonable tariffs or at no extra charge.

5.4 Kingston shall ensure that calls which are made from a Subscriber's telephone which are free of charge to that Subscriber, including calls to helplines, shall not be identified in the Subscriber's itemised bill.

5.5 Kingston shall not be subject to this Universal Service Condition in respect of any Subscriber where:

- (a) it provides Publicly Available Telephone Services to the Subscriber on a pre-paid basis; and
- (b) the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.

#### Condition 6: Quality of Service

6.1 Kingston shall, on 31 December 2003 and thereafter every six months, publish information with respect to its performance in complying with Universal Service Conditions 1, 2 and 3 in accordance with the quality of service parameters, definitions and measurement methods referred to in Annex III to the Universal Service Directive (except for those relating to unsuccessful call ratio and call set up time), and any additional standards and/or requirements set out in a direction under paragraph 6.3.

6.2 Publication of the information required under paragraph 6.1 shall be effected by:

- (a) sending a copy of such information to the Director;
- (b) placing a copy of such information on any relevant website operated or controlled by Kingston; and
- (c) sending a copy of such information or such parts thereof to any person who may request such a copy.

6.3 For the purposes of this Universal Service Condition, the Director may from time to time make a direction specifying:

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- (a) additional quality of service standards to be used to measure Kingston's performance in complying with Universal Service Conditions 1, 2 and 3; and
- (b) additional requirements with respect to the form and content of the information to be published in accordance with paragraph 6.1.

## **Annex B**

### **Guidelines on functional Internet access**

#### **The requirement to provide a connection which permits functional Internet access**

1. A provider designated for the purposes of universal service ('the Provider') is required under the specific universal service conditions to provide telephony services at data rates that are sufficient to permit functional Internet access.
2. This obligation relates to:
  - a single narrowband connection only: it does not extend to other types of connection, such as broadband or ISDN; and
  - the connection itself, not to other matters outside the control of the Provider, such as an end-user's computer or Internet service provider.
3. These Guidelines clarify the circumstances in which Oftel is likely to consider that the Provider is offering functional Internet access.
4. Oftel will consider that the Provider is providing functional Internet access where it is able to demonstrate that it is making every reasonable effort to ensure that lines achieve optimum performance, particularly where the end-user intends to use the line for Internet access.
5. In forming a view on whether the Provider is making every such reasonable effort, Oftel will look at:
  - the data rate achieved by the connection;
  - the measures taken by the provider in respect of pair-gain devices, such as DACS;
  - the measures taken by the provider in response to complaints about unsatisfactory Internet access, which are not related to pair-gain devices; and
  - the provider's general management and business processes.

#### **Data speed achieved by the connection**

6. Oftel has considered the capabilities of networks, local line plant and terminal equipment currently available. It has concluded that end-users should be able to expect that single narrowband connections will support data transmission at a reasonable speed.
  7. Whilst Oftel is not mandating a minimum speed, Oftel is of the view that, at the current time, a connection speed of 28.8 kbit/s is a reasonable benchmark for functional Internet access. Over time, this rate may need to be revised to
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reflect advances in networks and equipment, and changing social and economic conditions.

### **Measures taken by the provider in respect of pair-gain systems**

8. The following are an indication of the measures Oftel expects the Provider to take in connection with pair-gain devices, such as DACS. There may be other scenarios not specifically addressed below; the following matters are nevertheless likely to be relevant.

▪ ***Where an end-user requests a second line***

9. The Provider should establish whether the second line is intended to be used for Internet access.

10. If the line is intended to be used for Internet access, the provider should take all reasonable steps to avoid fitting, or using existing, pair-gain systems. Reasonable steps include:

- providing an unused line without pair-gain devices fitted;
- rearranging existing lines to provide a line without pair-gain devices fitted; and
- carrying out minor network infrastructure build to provide new lines without pair-gain devices fitted; and
- carrying out any other reasonable measures to provide a new line in preference to the use of pair-gain devices.

▪ ***Where an end-user complains about the performance of an existing line used to access the Internet***

11. Oftel considers that where a line is fitted with a pair-gain device, such as DACS, the line is unlikely to achieve optimum performance.

12. Therefore, where an end-user complains about the performance of a line used to access the Internet and the line is fitted with a pair-gain device, the Provider should take all reasonable steps to provide the end-user with a line without a pair-gain device fitted, for example by:

- removing the pair-gain system altogether;
  - providing an unused line without pair-gain devices fitted;
  - rearranging existing lines to provide a line without pair-gain devices fitted;
  - transferring the pair-gain system to a more suitable line;
  - carrying out minor network infrastructure build to provide new lines without pair-gain devices fitted;
  - deploying an alternative, less detrimental pair-gain system where possible; or
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- carrying out any other reasonable measures to provide a new line in preference to the use of pair-gain devices.

- ***Where the Provider is carrying out modifications to its network***

13. If, having exhausted other options, the Provider needs to fit existing lines with pair-gain systems or transfer a pair-gain system to another line, it should ensure that this will not adversely affect an existing user of narrowband access to the Internet.
14. There are several methods open to the Provider to assess the use of other lines, one of which is to examine call data records. Whilst Of tel suggests this as an example of a reasonable method for checking the use of the line, the provider should be aware of its responsibilities with respect to the use of call data records. The information gained from call data records must only be used for the purposes of establishing whether narrowband Internet access is used on a particular line. As detailed in Of tel's *Statement on BT's marketing of Internet services and use of joint billing (19 May 2002)*, it must not be used for any marketing purposes.

**Measures taken by the provider in response to complaints about unsatisfactory Internet access, which are not related to pair-gain devices**

- ***Investigation***

15. Where the Provider receives a complaint from an end-user about unsatisfactory connection speed, the Provider should take the end-user through a series of self-tests, such as checking the data speed displayed on the end-user's computer, and removing all other terminal equipment eg fax machines, from the connection.
16. Further investigation, such as the Provider conducting a site visit to test the connection itself, is required only where it is established that the end-user is experiencing connection speeds which are persistently lower than the benchmark of 28.8 kbit/s. The Provider is not required to investigate further where the problem clearly falls outside its control, eg there is a problem with the end-user's computer or Internet service provider.

- ***Minor problem with the network***

17. Unsatisfactory Internet access may be caused by a minor problem, eg interference, a problem with the final link (underground or overhead) from the distribution point to the end-user's premises, or some other easily repairable fault.
  18. Where the Provider establishes that there is a minor problem, it should take action at the earliest opportunity to ensure that the end-user's connection
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provides functional Internet access, in particular that it is capable of achieving the benchmark data speed of 28.8 kbit/s.

▪ ***More significant problems with the network***

19. Oftel recognises that there may be circumstances where there is a significant problem with the network and it is not reasonable and/or proportionate to expect the Provider to take action on the basis of a single complaint about unsatisfactory Internet access.

20. The Guidelines address two examples of such a significant problem below. There may be other scenarios not specifically addressed below; the following examples are nevertheless likely to be relevant.

▪ ***Distribution ('D-side') cables***

21. These are the secondary cables that link a primary connection point (known as a 'cabinet') to the final distribution point serving an end-user. One D-side cable will probably serve tens of distribution points but a particular distribution point is normally only served by one D-side cable.

22. Where the Provider establishes that there is a problem with a D-side cable, it should log the complaint against that particular cable and, when the threshold indicated below is reached, take action at the earliest reasonable opportunity to ensure that functional Internet access, in particular a benchmark connection speed of 28.8 kbit/s, is provided to the affected end-users.

23. *Threshold:* where the Provider logs substantiated complaints regarding 10% or more of the working circuits terminated on a particular cable at a particular distribution point or at a particular cabinet.

▪ ***Main ('E-side') cables***

24. These are the cables that form the first stage of the route from the exchange building to the customer's premises. At the exchange end, they terminate on the main distribution frame. The remote end terminates in a cabinet. One E-side cable can serve several cabinets, and equally a particular cabinet can be served by more than one E-side cable.

25. Where the Provider establishes that there is a problem with an E-side cable, it should log the complaint against the particular cable and, when the threshold indicated below is reached, put in place a work programme to ensure that the problem is addressed at the earliest reasonable opportunity. As indicated under 'General management and business processes' below, the Provider should advise Oftel of any such work programme.

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26. *Threshold*: where the Provider logs substantiated complaints regarding 10% or more of the working circuits terminated on a particular cable at a particular cabinet.

### **General management and business processes**

27. Where it is not possible on any given line to remove pair-gain devices or otherwise achieve a connection speed of 28.8 kbit/s in the short term, the Provider should be able to demonstrate that it is in the process of making, or planning to make, improvements to its network (whether equipment, lines or other part) not capable of supporting 28.8 kbit/s.

28. The Provider should establish appropriate management and business processes to:

- monitor the level of complaints from end-users on connection speeds for Internet access and assess the underlying causes;
  - monitor the use of pair-gain systems within the network;
  - ensure that the impact of pair-gain systems upon Internet access decreases over time;
  - monitor the number of substantiated complaints regarding D-side and E-side cables; and
  - provide Oftel with regular reports concerning the above issues, including details of any work programmes regarding improvements to its network to deliver functional Internet access.
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