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STATUTORY INSTRUMENTS

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**1999 No. 2452**

**TELECOMMUNICATIONS**

**The Telecommunications (Licence Modification) (Mobile  
Public Telecommunication Operators) Regulations 1999**

*Made* - - - - *3rd September 1999*  
*Laid before Parliament* *6th September 1999*  
*Coming into force* - - *27th September 1999*

The Secretary of State, being a Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in respect of measures relating to telecommunications, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:—

**Citation and commencement**

1. These Regulations may be cited as the Telecommunications (Licence Modification) (Mobile Public Telecommunication Operators) Regulations 1999 and shall come into force on 27th September 1999.

**Interpretation**

2. In these Regulations—

“the 1984 Act” means the Telecommunications Act 1984<sup>(3)</sup>;

“Applicable Systems” means the telecommunication systems run by BT Cellnet, Dolphin, One2One, Orange or Vodafone in the United Kingdom in accordance with the BT Cellnet Licence, the Dolphin Licence, the One2One Licence, the Orange Licence or the Vodafone Licence respectively, as the case may be;

“BT Cellnet” means Telecom Securicor Radio Limited;

“the BT Cellnet Licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to BT Cellnet on 22 March 1994;

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

“Dolphin” means Dolphin Telecommunications Limited (formerly known as TetraLink Telecommunications Limited);

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(1) S.I. 1996/266.

(2) 1972 c. 68.

(3) 1984 c. 12, as amended by the Telecommunications (Licensing) Regulations 1997 (S.I.1997/2930). There are other amendments to 1984 c. 12 which are not relevant to these Regulations.

“the Dolphin Licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Dolphin on 12 December 1997;

“the former licences” means the relevant licences in the form they were in immediately before the coming into force of these Regulations;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the 1984 Act;

“Mobile Radio Telecommunication Services” means any telecommunication service consisting in the conveyance of Messages by means of a telecommunication system where every Message that is conveyed thereby has been, or is to be, conveyed through the agency of Wireless Telegraphy to or from a telecommunication system which is designed or adapted to be capable of use whilst in motion;

“the modified licences” means the relevant licences as amended by these Regulations;

“One2One” means Mercury Personal Communications Limited;

“the One2One Licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to One2One on 9 May 1995;

“Orange” means Orange Personal Communications Services Limited;

“the Orange Licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Orange on 27 July 1995;

“relevant licences” means the BT Cellnet Licence, the Dolphin Licence, the Mercury Licence, the Orange Licence and the Vodafone Licence;

“Service Provider” means any person who is in the business of providing Mobile Radio Telecommunication Services to another by means of a telecommunication system lawfully connected to the Applicable Systems or who is in the business of securing the provision of such services by such means;

“the standard Schedules” means the Schedules to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999(4);

“Vodafone” means Vodafone Limited;

“the Vodafone Licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Vodafone on 9 December 1993; and

“Wireless Telegraphy” has the same meaning as in the Wireless Telegraphy Act 1949(5).

### **Modification of the relevant licences**

**3.** The relevant licences are hereby modified as follows—

(a) for the Table of Contents there shall be substituted

(i) in the case of the Dolphin Licence, the One2One Licence and the Orange Licence the Table of Contents set out in Schedule 1 hereto; and

(ii) in the case of the BT Cellnet Licence and the Vodafone Licence the Table of Contents set out in Schedule 1 hereto, together with the addition after condition 69 of the following—

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(4) S.I. 1999/2450.

(5) 1949 c. 54 as amended by the Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930).

## “Part K

### **Control of Interconnection Charges;**

**70”.**

- (b) in paragraph 1 for the words “telecommunication systems of every description” there shall be substituted the words

“telecommunication systems specified in Annex A;”

- (c) after paragraph 1 there shall be inserted the following paragraph—

“**1A.** Where a Specified Public Telecommunications Operator has been granted a Licence, other than this Licence, under section 7 of the Act, authorising the Operator to run telecommunication systems and provide telecommunication services and which has not been revoked (“the Other Licence”), this Licence shall not apply to the extent that any telecommunication systems or telecommunication services otherwise authorised to be run or provided under this Licence are or could be run or provided under the Other Licence.”

- (d) for paragraphs 6 to 8 inclusive there shall be substituted the following paragraphs—

“**6.** For the purposes of this Licence:

- (a) the “Applicable Systems” means any or all of the telecommunication systems run by the Licensee under this Licence, unless the context otherwise requires; and
- (b) “Specified Public Telecommunications Operator” means British Telecommunications plc, Kingston Communications (Hull) PLC and such other public telecommunication operators as may be specified by the Secretary of State from time to time and described in a list kept by the Director and made available by him for inspection by the general public.

**7.** Where this Licence provides for any power of the Secretary of State or the Director to give any direction, notice or consent or make any specification, or of the Director to make any designation or determination, it implies, unless a contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or give or make again any such direction, notice, consent, specification, designation or determination; and any reference however expressed to the Director making any determination or giving any direction or consent about any matter shall be construed as making such determination or giving such direction or consent after consultation with the Licensee and where appropriate with any other person who may have a relevant interest in the matter to which the determination, direction or consent relates.

**8.** Any notification which is required to be given under this Licence by the Secretary of State or the Director shall be satisfied by serving the document by post on the Licensee at the Licensee’s registered office.”

- (e) for Schedule 1 there shall be substituted Schedule 1 of the standard Schedules, subject to the amendments set out in Schedule 2 hereto;
- (f) in the case of the BT Cellnet Licence and the Vodafone Licence, after Part J in Schedule 1 there shall be inserted Part K as set out in Schedule 3 hereto;

- (g) for Schedule 2 there shall be substituted Schedule 2 of the standard Schedules, subject to the modification, that in the case of the BT Cellnet Licence, after sub-paragraph (d) of paragraph 1 there shall be inserted the following paragraphs—
- “(dd) if either British Telecommunications plc, or Securicor Technology Investments Ltd, as the case may be, holds shares in the Licensee entitling that company to cast more than 60% of the total number of those votes which may be cast by members of the Licensee in all circumstances at all general meetings of the Licensee, and for the purpose of this sub-paragraph shares held by both British Telecommunications plc or Securicor Technology Investments Ltd, as the case may be, through a nominee shall be regarded as shares held by that body; or
  - (ddd) if the Licensee takes on lease from British Telecommunications plc all or part of the apparatus comprised in the Applicable Systems provided that this Licence may not be revoked solely on the ground that the Licensee has taken on lease all or part of the apparatus from a Subsidiary of British Telecommunications plc; or;”
- (h) for Schedule 3 there shall be substituted Schedule 3 of the standard Schedules, subject to the following amendments—
- (i) sub-paragraph (d) of paragraph 3 shall be deleted; and
  - (ii) in paragraph 4 the definition of “Mobile Radio Tails Service” shall be deleted;
- (i) for Schedule 4 there shall be substituted Schedule 4 of the standard Schedules; and
- (j) after Schedule 4 there shall be inserted Annex A as set out in Schedule 4 hereto.

### **Transitional provisions**

4.—(1) So far as anything done or treated as done under or for the purposes of any provision of the former licences could have been done under or for the purposes of the corresponding provision of the modified licences, it shall have effect as if done under or for the purposes of the corresponding provision; and any direction, notice, consent, specification, designation, determination or other decision made or having effect under any provision of the former licences shall be treated for all purposes as made and having effect under the corresponding provision.

(2) Where any period of time specified in a provision of the former licences is current immediately before the coming into force of these Regulations, the corresponding provision of the modified licences shall have effect as if that period of time—

- (a) ran from the date or event from which it was running immediately before the coming into force of these Regulations, and
- (b) expired whenever it would have expired if the former licences had not been modified;

and any rights, liabilities, obligations or requirements dependent on the beginning, duration or end of such a period as mentioned above shall be under the modified licences as they were or would have been under the former licences.

(3) Notwithstanding the modification of the relevant licences by these Regulations, and subject to regulation 4(4) below, where immediately before the coming into force of these Regulations BT Cellnet and Vodafone were required under provisions in the BT Cellnet Licence and the Vodafone Licence respectively to provide Mobile Radio Telecommunication Services to a Service Provider or to a person intending to be a Service Provider, BT Cellnet and Vodafone shall each continue to supply such services in accordance with the said provisions as if the said provisions continued to apply.

(4) The obligation in regulation 4(3) above shall continue until either—

- (a) the Director makes a determination in accordance with Part F of the BT Cellnet Licence and the Vodafone Licence respectively; or

(b) 31st March 2000,  
whichever shall first occur.

3rd September 1999

*Patricia Hewitt,*  
Minister of State for Small Business and E  
Commerce,  
Department of Trade and Industry

SCHEDULE 1

Regulation 3(a)

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SCHEDULE 2

Regulation 3(e)

**Amendments to Schedule 1 of the standard Schedules.**

**1. In paragraph 1 of Part 1 of Schedule 1**

- (i) in the definitions of “Operator”, for the words “Condition 28” wherever they appear  
there shall be substituted the words “Conditions 28 and 68”;



(ii) for the definition of “Qualifying Operator” there shall be substituted the following definition—

““Qualifying Operator” has the meaning given to it in Condition 28.3 and 68.2;”;

(iii) for the definition of “Service Provider” there shall be substituted the following definition—

““Service Provider” means:

- (i) except for the purposes of the definition of “Direct Business” and Conditions 5, 22, 23, 28, 56A, 56B, 64, 68 and 69, any person who is in the business of providing telecommunication services of any description;
- (ii) for the purposes of the definition of “Direct Business” and Conditions 5, 22, 23, 28, 56A, 56B, 64 and 69, any person who is in the business of providing Mobile Radio Telecommunication Services to another by means of a telecommunication system lawfully connected to the Applicable Systems or who is in the business of securing the provision of such services by such means;
- (iii) for the purposes of Condition 68, any person providing a service for reward to the public which is delivered entirely by means of a telecommunication system;”

(iv) after the definition of “Value Added Service” there shall be inserted the following

—  
“Additional Definitions relating to Schedule 1 to this Licence.

“Apparatus Production Business” means the production of telecommunication apparatus insofar as it is undertaken in the United Kingdom by the Licensee or any wholly owned Subsidiary taken together;

“Apparatus Supply Business” means any of the following activities of the Licensee or of any wholly owned Subsidiary insofar as they are undertaken in the United Kingdom together and do not form part of the activities of the Direct Business that is to say:

- (i) the supply of telecommunication apparatus; and
- (ii) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of telecommunication apparatus, which in either case is to be connected to but not comprised in the Applicable Systems;

“Cell” means a geographical area served by a Station for Wireless Telegraphy which is dedicated to transmitting or receiving Messages;

“Cellular System” means a telecommunication system in which:

- (i) the area in which telecommunication services are provided is divided up into a number of Cells;
- (ii) Stations for Wireless Telegraphy comprised in the system are automatically controlled by a central processor;
- (iii) Messages are conveyed through the agency of Wireless Telegraphy between:
  - (a) Stations for Wireless Telegraphy comprised in the system (the first system); and

- (b) telecommunication apparatus or telecommunication systems which in either case are designed or adapted to be capable of being used while in motion (the second system);
- (iv) the Wireless Telegraphy frequencies used for the purpose of conveyance are assigned automatically;
- (v) there is a control procedure which allows the telecommunication service consisting in the conveyance of Messages between any of the first systems and any of the second systems to be continued to be provided between a different first system and that particular second system as the second system moves from Cell to Cell; and
- (vi) the strength of emissions of the Stations for Wireless Telegraphy comprised in the system is automatically controlled so as to secure as far as technically possible that each such Station for Wireless Telegraphy can effectively provide services only in the Cell in which it is located;

“Direct Business” means any of the following activities of the Licensee or any wholly owned Subsidiary insofar as they are undertaken in the United Kingdom taken together, that is to say:

- (i) the supply of any telecommunication apparatus which is or is to be connected to:
  - (a) the Applicable Systems; or
  - (b) any telecommunication system connected to the Applicable Systems, but which is not and is not to be comprised in the Applicable Systems;
- (ii) the provision of any telecommunication service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of any such apparatus; or
- (iii) the provision of any telecommunication service by means of the Applicable Systems to or for any person who is not:
  - (a) a Service Provider;
  - (b) the Crown, an Emergency Organisation, or a person specified for the time being in Condition 1.4(c) of Schedule 1;
  - (c) a Schedule 2 Public Operator; or
  - (d) a person running a telecommunication system or providing telecommunication services outside the United Kingdom, including any activity to promote or market those activities;

“Mobile Portability” means Portability relating to Numbers allocated for use with Mobile Radio Telecommunication Services;

“Utility Services” means services consisting in the provision of gas, water or electricity; and

“Wireless Telegraphy” and “tation for Wireless Telegraphy” have the same meaning as in the Wireless Telegraphy Act 1949.;”;

**2.** After paragraph 2 of condition 1 there shall be inserted the following paragraphs—

“**1.3.** The Licensee shall, except to the extent that the Director otherwise determines, install, keep installed and run the Applicable Systems in such a way as to provide, or offer to provide, to persons described in paragraph 1.4 on and following the date that this Licence comes into force a Mobile Radio Telecommunication Service.

1.4. For the purpose of paragraph 1.3, the persons mentioned are:

- (a) the Crown;
- (b) Emergency Organisations; and
- (c) any person who is engaged in the provision of Utility Services or in public administration and who is for the time being specified for the purposes of this Condition.

1.5. Any specification made by the Director under paragraph 1.4(c) shall be described in a list kept for that purposes by the Director and made available by him for inspection by the general public.;"

3. For condition 5 there shall be substituted the following condition—

**“CONNECTION OF SYSTEMS AND APPARATUS**

5.1. Subject to Conditions 56A and 65 and to the following provisions of this Condition the Licensee shall at the written request of:

- (a) a Service Provider to whom the Licensee is obliged to provide Mobile Radio Telecommunication Services; or
- (b) in any case where the Licensee has agreed to provide Mobile Radio Telecommunication Services to any person, that person,

connect or permit the connection of the Applicable Systems to any telecommunication system designed or adapted to be capable of use while in motion which is composed of apparatus which is approved under section 22 of the Act for connection to the Applicable Systems or is Compliant Terminal Equipment and shall not discontinue a connection of any such system lawfully made.

5.2. Where the Licensee provides services other than Mobile Radio Telecommunication Services to any person, the Licensee:

- (a) (i) shall connect or permit the connection of, at a Network Termination Point within Network Termination and Testing Apparatus situated on Served Premises, the Applicable Systems to:
  - (A) any item of telecommunication apparatus which is approved for the time being for connection to that Applicable System under section 22 of the Act or is Compliant Terminal Equipment; or
  - (B) any other telecommunication system to which this Condition applies which is or is to be run by the Crown or which is composed of apparatus which is approved for connection to that system or is Compliant Terminal Equipment,

which is owned by or supplied to another person;

- (b) shall not discontinue such connection of any such apparatus or system lawfully made;

5.3. Apparatus shall not be regarded as approved for connection to any system for the purposes of paragraph 5.2 unless that apparatus is Compliant Terminal Equipment or has been so approved:

- (a) by the Secretary of State; or
- (b) by some other person by virtue of an authorisation given by the Secretary of State being an authorisation which required the person authorised, before approving any apparatus or designating any standard to which apparatus must conform if it

is to be approved, to be satisfied that connection of the apparatus to the system would not be likely:

- (i) to cause the death of, or personal injury to, or damage to the property of the Licensee or any person engaged in the running of that system; or
- (ii) materially to impair the quality of any telecommunication service provided by means of that system or any system connected to it (other than the system being connected).

**5.4.** No apparatus or system is required under paragraphs 5.1 or 5.2 to be, or to be permitted to be, connected or kept connected to the Applicable Systems if that apparatus, or any apparatus comprised in that system, as the case may be:

- (a) conformed to the relevant standard or standards at the time when the connection to the Applicable Systems was made but no longer does so and does not conform to the relevant standard or standards (if any) for the time being designated under section 22(6) of the Act; or
- (b) was at the time when the connection to the Applicable Systems was made but has since ceased to be Compliant Terminal Equipment; or
- (c) while continuing to conform to the relevant standard is in the opinion of the Licensee liable to cause the death of, or personal injury to, or damage to the property of, the Licensee, or any person engaged in the running of the Applicable Systems or materially to impair the quality of any telecommunication service provided by means of the Applicable Systems and the Director has not expressed a contrary opinion.

**5.5.** Paragraphs 5.1, 5.2, 5.3 and 5.4 do not apply to any system run by a Schedule 2 Public Operator to which Condition 9 or Part C applies, or to apparatus comprised in such system.

**5.6.** Except with the consent of the Director the Licensee shall not connect nor permit to be connected any Relevant Terminal Apparatus to any of the Applicable Systems on Served Premises except by means of Network Termination and Testing Apparatus.”

**4.** In condition 7—

- (i) in sub-sub-paragraph (i) of sub-paragraph (a) of paragraph 2, for the words “Conditions 2, 3 and 4” there shall be substituted the words “Conditions 1, 2, 3 and 4”; and
- (ii) after paragraph 5 there shall be inserted the following paragraph—

“**7.6.** Where the Licensee provides Mobile Radio Telecommunication Services and offers to provide Value Added Services paragraph 7.2(a)(i) shall be deemed to be satisfied in respect of each telecommunication service comprised in those Value Added Services if the Licensee publishes, in the manner and at the times specified in paragraph 7.5, a notice specifying, or specifying the method that is to be adopted for determining, the aggregate charge and other terms and conditions on which it offers to provide Value Added Services.”

**5.** In sub-paragraph (c) of paragraph 3 of condition 15, at the end there shall be inserted the words “,or, in the case of a Customer Interface Specification related to the provision of Mobile Radio Telecommunication Services, not less than 90 days.”;

**6.** In sub-paragraph (b) of paragraph 9 of condition 22, after the word “bill” there shall be inserted the words “by the Licensee or by a Service Provider”;

7. For condition 23 there shall be substituted the following condition—

**“PROVISION OF SPECIAL FACILITIES RELATING  
TO CHATLINE AND MESSAGE SERVICES**

**23.1.** The Licensee shall comply or shall take all reasonable steps to ensure that Service Providers who provide telecommunication services which are provided by means of the Applicable Systems comply with any direction made under this paragraph which requires the Licensee to make available such of the facilities listed in paragraph 23.2 as are specified in the direction. A direction under this paragraph shall be made by the Director after consultation with the Licensee and shall specify only facilities which the Director considers it will be technically and economically practicable for the Licensee or such a Service Provider to provide. The direction shall specify the date by which each facility is to be provided and the class or description of customer (whether described by reference to area or otherwise) to whom it is to be provided and shall be subject to such conditions as the Director thinks fit.

**23.2.** The facilities referred to in paragraph 23.1 are:

- (a) the provision to any customer who requests it, and who is charged by the Licensee or a Service Provider for voice telephony services provided by means of the Applicable Systems, of a bill or invoice showing, by reference to the number used to access the service, and the date and time on which access was obtained, the amount of any charge imposed by the Licensee or a Service Provider for a telephone call to any service to which this Condition applies;
- (b) the notification to such a customer who requests it, as soon as reasonably practicable, and in any event not later than 28 days after such request, of:
  - (i) the date on which the total charges accrued within the standard billing period of the Licensee or a Service Provider for voice telephony services and any other service to be included in the bill or invoice for such services exceed an amount specified by that customer being an amount, or one of a number of amounts, from time to time specified by the Licensee as being suitable for the purpose; or
  - (ii) the date on which the aggregate charges accrued in any such period in respect of services to which this Condition applies exceed an amount determined from time to time by the Director; and
- (c) the barring, by means of apparatus forming part of the Applicable Systems, on request by any such customer, of access from any Exchange Line specified by that customer and in respect of which that customer is the customer of the Licensee, to all services to which this Condition applies.

**23.3.** The services to which this Condition applies are those Chatline Services and Message Services in respect of which:

- (a) the person providing the service obtains the whole or any part of his revenue from the Licensee (or, where that person is the Licensee, that part of the Licensee’s business which provides the service is credited with revenue from that part of its business which conveys the Messages comprised in, or resulting from the provision of, the service); and
- (b) the person responsible for paying the charges for the service is billed for them by the Licensee or by a Service Provider and the bill includes charges in respect of the generality of telecommunication services provided to that person by means of the Applicable Systems.;

8. In paragraph 1 of condition 46 there shall be inserted at the beginning the words—

“Except where the determination referred to in Condition 44.1 has been made only in respect of the networks and services described in Part III (mobile networks and services) of Schedule 1 to the Interconnection Regulations;”

9. In condition 48,

(i) in paragraph 3 there shall be inserted at the beginning the following words—

“Where the determination under Condition 44.1 is made by reference to the provision of the networks and services described in Part I (fixed public telephone networks and services) or Part II (leased lines services) of Schedule 1 to the Interconnection Regulations; and”

(ii) after paragraph 3 there shall be inserted the following paragraph—

“**48.3A.** Where the determination under paragraph 44.1 is made by reference to the provision of the networks and services described in Part III (public mobile telephone networks and services) of Schedule 1 to the Interconnection Regulations and has determined the Licensee as having Significant Market Power in the national market for Interconnection the Licensee shall secure that charges shall be transparent and cost-oriented, and shall ensure that it is able to demonstrate the same to the Director at his request.”

10. After condition 56 there shall be inserted the following conditions—

“**PROVISION OF MOBILE RADIO TELECOMMUNICATION  
SERVICES TO SERVICE PROVIDERS**”

**56A.1.** Where:

- (a) a determination has been made which applies to the Licensee for the purposes of Condition 56 above; and
- (b) the determination under paragraph (a) above is in relation to a relevant economic market which is comprised of at least the generality of Mobile Radio Telecommunication Services in Great Britain;

subject to the following provisions of this Condition, the Licensee shall at the written request of a Service Provider or a person intending to be a Service Provider provide Mobile Radio Telecommunication Services by means of the Applicable Systems to that Service Provider or that person if that Service Provider or that person is able to demonstrate to the reasonable satisfaction of the Licensee that:

- (i) during the most recent year for which published accounts of that Service Provider are available not less than 80% by value of the telecommunication services provided by the Licensee to that Service Provider by means of the Applicable Systems were resold to persons outside that Service Provider’s Group; or
- (ii) in the event that no such telecommunication services were provided to that person for resale during that financial year not less than 80% by value of the telecommunication services to be provided by the Licensee to that person by means of the Applicable Systems during the following financial year will be resold to persons outside that person’s Group.

**56A.2.** The Licensee shall not be obliged under paragraph 56A.1 to provide services to a Service Provider if in the opinion of the Licensee there is reasonable cause to doubt the likelihood (for whatever reason) of that Service Provider:

- (a) providing services to others in a proper and efficient manner; or

- (b) financing the provision of services, and the Director has not given a written contrary decision.

## SEPARATION OF ACTIVITIES AND PREPARATION OF ACCOUNTS

**56B.1.** This Condition only applies where:

- (a) a determination has been made which applies to the Licensee for the purposes of Condition 56 above; and
- (b) the determination under paragraph (a) above is in relation to a relevant economic market which is comprised of at least the generality of Mobile Radio Telecommunication Services in Great Britain;

**56B.2.** If the Licensee carries on any of the activities of the Direct Business, the Licensee shall:

- (a) carry on those activities separately from the other businesses of the Licensee; and
- (b) record in its accounting records maintained in accordance with this Condition the cost of:
  - (i) providing any telecommunication service;
  - (ii) supplying any apparatus; or
  - (iii) doing any other thing connected with the provision of telecommunication services or the supply of apparatus,

to or for a person who is not:

- (A) a Service Provider;
- (B) the Crown, an Emergency Organisation or a person for the time being specified under Condition 1.4(c);
- (C) a Schedule 2 Public Operator; or
- (D) a person running a telecommunication system or providing telecommunication services outside the United Kingdom,

and shall do any of the things specified in paragraphs 56B.2(b)(i), 56B.2(b)(ii) and 56B.2(b)(iii) at a cost at least equal to the amount which the Licensee would have charged for the provision of that telecommunication service or the supply of that apparatus or the doing of that thing to or for a Service Provider.

**56B.3.** The Licensee shall, if it carries on any activities comprised in any of the following businesses, that is to say the Apparatus Supply Business, the Apparatus Production Business, the Direct Business, the Systems Business or the Supplemental Services Business or any other distinct business carrying on any commercial activity connected with telecommunications carried on by the Licensee, maintain accounting records in such form that the activities of each of those businesses which it does carry on are separately attributable in the books of the Licensee, being records sufficient to show and explain the transactions of each of those businesses.

**56B.4.** The Licensee shall:

- (a) prepare in respect of each complete financial year of the Licensee during which this Licence is in force, or of such lesser periods as the Director may specify but not more frequently than quarterly, accounting statements setting out and in the case of yearly statements fairly presenting the costs (including capital costs), revenue and financial position of the businesses specified or described in paragraph 56B.3 which are carried on by the Licensee in that period and including a reasonable assessment of the assets employed in and liabilities attributable

to those businesses and showing separately, in the case of yearly accounting statements, the amount of any material item of revenue, cost, or any asset or liability which has been either:

- (i) charged from or allocated to the business of any member of the Licensee's Group together with a description of the basis of the value on which the charge or allocation was made; or
  - (ii) determined by apportionment or attribution from an activity common to the Licensee's Group and, if not otherwise disclosed, the basis of that apportionment or attribution;
- (b) at the request of the Director, procure in respect of each of the accounting statements prepared in respect of a complete financial year of the Licensee a report by the Licensee's Auditor stating whether in his opinion that statement is adequate for the purposes of this Condition; and
- (c) at the request of the Director, deliver to the Director a copy of each of the accounting statements and of the reports relating thereto required under paragraphs 56B.4(a) and 56B.4(b) as soon as reasonably practicable and in any event not later than six months after the end of the period to which they relate.

**56B.5.** In this Condition references to the costs of any business do not include profits of that business.;"

**11.** In condition 57,

- (i) in paragraph 1 for the words "Where a determination has been made" there shall be substituted the words "Subject to paragraph 57.2, where a determination has been made"; and
- (ii) after paragraph 1 there shall be inserted the following paragraph—

**57.2.** Where a determination has been made which applies to the Licensee for the purposes of Part F of this Licence in respect of the provision of Mobile Radio Telecommunication Services to Service Providers, nothing in this Condition shall apply to the Licensee except to the extent that that determination is in relation to the relevant economic market which is comprised of at least the generality of Mobile Radio Telecommunication Services in Great Britain.;"

**12.** In condition 58,

- (i) in paragraph 1 for the words "Where a determination has been made" there shall be substituted the words "Subject to paragraph 58.8, where a determination has been made"; and
- (ii) after paragraph 6 there shall be inserted the following paragraphs—

**58.7.** Where the Licensee provides Mobile Radio Telecommunication Services and offers to provide Value Added Services paragraph 58.2(a) shall be deemed to be satisfied in respect of each telecommunication service comprised in those Value Added Services if the Licensee publishes, in the manner and at the times specified in paragraphs 58.2, 58.5 and 58.6, a notice specifying, or specifying the method that is to be adopted for determining, the aggregate charge and other terms and conditions on which it offers to provide Value Added Services.

**58.8.** Where a determination has been made which applies to the Licensee for the purposes of Part F of this Licence in respect of the provision of Mobile Radio Telecommunication Services to Service Providers, nothing



PART J: ADDITIONAL REQUIREMENTS RELATING TO THE PROVISION OF MOBILE RADIO TELECOMMUNICATIONS SERVICES

in this Condition shall apply to the Licensee except to the extent that that determination is in relation to the relevant economic market which is comprised of at least the generality of Mobile Radio Telecommunication Services in Great Britain.;

13. After paragraph 8 of condition 64 there shall be inserted the following paragraph—

“**64.8A.** Nothing in these Conditions shall oblige the Licensee to:

- (a) provide a service of any description; or
- (b) supply apparatus of any description,

to any person, other than to a person of a description mentioned in Condition 1.4 if it otherwise provides or offers to provide that service or supplies or offers to supply such apparatus solely to Service Providers or persons who are in the business of providing any telecommunication service which is not a Mobile Radio Telecommunication Service to another by means of a telecommunication system lawfully connected to the Applicable Systems or persons who are in the business of securing the provision of such service by such means.; and”

14. After condition 64 there shall be inserted the following—

“PART J: ADDITIONAL REQUIREMENTS  
RELATING TO THE PROVISION OF MOBILE  
RADIO TELECOMMUNICATION SERVICES

FAILURE OF SERVICE PROVIDER TO PROVIDE SERVICES

**65.1.** Where the contract of a Service Provider with the Licensee for the provision by the Licensee of any Mobile Radio Telecommunication Service is terminated by the Licensee or by that Service Provider or where, for any reason, a Service Provider ceases to provide such Service by way of resale, the Licensee may provide such Service immediately prior to such cessation if the Licensee:

- (a) gives notice in writing to the Director within two working days of starting to provide such Service; and
- (b) provides to the person receiving such Service within seven working days of starting to provide that Service a list of the names and addresses of all other Service Providers together with a statement that those other Service Providers are able to provide services to that person in competition with the Licensee.

**65.2.** During the first three months in which the Licensee provides any Mobile Radio Telecommunication Service to any person pursuant to paragraph 65.1, the Licensee shall not, in providing that person with any information concerning any Mobile Radio Telecommunication Service authorised to be provided by paragraph 3 of Schedule 3 or in providing any assistance to that person in relation to the provision of any such service, unfairly promote any Service Provider or any business carried on by the Licensee in relation to the provision of such Service so as to place at a significant competitive disadvantage persons competing with that Service Provider or that business.

**65.3.** For the avoidance of doubt, paragraphs 65.1 and 65.2 override the general right of the Licensee to provide services otherwise than to Service Providers.

## PROHIBITION ON UNFAIR CROSS-SUBSIDIES

**66.1.** Except where the Director agrees otherwise, the Licensee shall record at full cost in its accounting records any material transfer between it and any other member of the Licensee's Group and between any of the following businesses:

- (a) the Apparatus Supply Business;
- (b) the Apparatus Production Business;
- (c) the Direct Business;
- (d) the Supplemental Services Business; and
- (e) the Systems Business.

**66.2.** Where it appears to the Director that the Licensee is unfairly cross-subsidising any of the businesses specified in paragraph 66.1 or any activity carried out by another member of the Licensee's Group within the United Kingdom it shall take such steps as the Director may direct for the purpose of remedying the situation.

**66.3.** For the purpose of this Condition:

- (a) a transfer from one business to another business or company takes place when anything (including any service or money) produced or acquired by, normally used in, or otherwise at the disposal of, the first mentioned business is made available for the purposes of the other business or company; and
- (b) "full cost" in the case of money transferred includes the market rate of interest for that money.

**66.4.** This Condition shall apply with the omission of paragraph 66.1(a) if and for so long as no monopoly situation within the meaning of section 6 of the Fair Trading Act 1973 exists in relation to the supply of telecommunication apparatus of any description by the Licensee.

**66.5.** In considering whether any cross-subsidy of the Supplemental Services Business is unfair, the Director shall have regard to the extent to which the Licensee has cross-subsidised that business for the purposes of satisfying any obligation under Conditions 1 or 4.

## SPECIAL TELEPHONES FOR THE HEARING IMPAIRED

**67.1.** If the Licensee or a Subsidiary of the Licensee engages in the supply of Telephones in the United Kingdom, the Licensee shall ensure there are available for supply in such a way as to meet reasonable demands for them Telephones of the following descriptions:

- (a) Telephones capable of being inductively coupled to hearing aids which have been designed to be so coupled to Telephones; or
- (b) Telephones incorporating sound amplification facilities.

## MOBILE NUMBER PORTABILITY

**68.1.** The Licensee shall provide Mobile Portability either to any Qualifying Operator, or in the capacity of a Qualifying Operator, on reasonable terms in accordance with the Functional Specification and with the following provisions provided that any charges for provision of such Portability shall be made by the Licensee in accordance with the following principles:

- (a) subject always to the requirement of reasonableness, charges shall be based on the incremental costs of providing Portability, unless
  - (i) the Donor and Recipient Operators shall have agreed another basis for charges, or

- (ii) the Director shall have determined, following an application by either or both Operators, that another basis for charges should be used;
- (b) the Donor Operator shall make no charge in relation to System Set-Up Costs;
- (c) subject to sub-paragraph 68.1(b) the Recipient Operator shall pay charges, other than the annual fee or charges for ongoing costs related to registration of a ported Number or of a subscriber, based on the reasonable costs incurred by the Donor Operator in providing Portability with respect to each Number which, subject to sub-paragraph 68.1(d) may be paid by way of specific elements of the provision of the facility;
- (d) the Donor Operator shall make no specific charge based on Additional Conveyance Costs.

**68.2.** “Qualifying Operator” means an Operator which:

- (a) has notified the Licensee in writing that it requests the provision of Portability from the Licensee specifying the type or types and Extent of Portability so requested; and
- (b) is able and willing to provide on reasonable terms and in accordance with the Functional Specification and these provisions the same type or types and Extent of Portability to the Licensee as it has sought;

and the Licensee shall be deemed to be acting in the capacity of a Qualifying Operator where the Licensee has requested in writing the provision of Portability from a Public Operator and has offered Portability to that Public Operator in accordance with sub-paragraphs 68.2(a) and 68.2(b) above.

**68.3.** For the purposes of this Condition the Extent of Portability means the Numbers sought and offered by the party requesting Mobile Portability.

**68.4.** Where a notice for the purposes of paragraph 68.2 has been given, the Licensee or the Qualifying Operator may refer in writing to the Director for his determination any question as to the reasonableness of:

- (a) the request for the provision of Portability, taking into account the technical and operational characteristics of the Licensee’s Applicable Systems and, if relevant, those of the applicable systems of the Qualifying Operator;
- (b) the Extent of the Portability requested;
- (c) the costs incurred in providing Portability;
- (d) the categorisation of costs;
- (e) the proposed use or use of a higher cost method in proposing to implement or implementing any aspect of Portability where a lower cost method could or ought to have been used;
- (f) the charges to be made for providing Portability;
- (g) the basis for calculating such charges.

**68.5.** Before making any determination under paragraph 68.4 the Director shall consult with the Licensee and the relevant Qualifying Operator and with Interested Parties and consider any representations made by them.

**68.6.** If requested in writing by the Director, the Licensee shall provide to the Director a record of each Number in relation to which it is providing Portability, specifying the relevant Qualifying Operator in each case.

**68.7.** Where the Licensee provides Mobile Radio Telecommunication Services by means of the Applicable Systems to a Subscriber either by its Direct Business or by means of a Service Provider, and where the Subscriber nominates another Service Provider or Operator to provide such services, the Licensee shall ensure that either its Direct Business or the first Service Provider undertakes to procure, if so requested by the nominated Service Provider or Operator, the retention on reasonable terms by the Subscriber of any Number allocated to that Subscriber by or on behalf of the Licensee.

**68.8.** For the purposes of this Condition “Number”, “Numbering Plan”, and “Numbering Conventions” each have the same meaning as the Conditions in this Licence relating to numbering.

### CODE OF PRACTICE ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION

**69.1.** Except where the Director agrees otherwise the Licensee shall take all reasonable steps to ensure that its employees observe the provisions of the code of practice agreed with the Director and notified to him as amended from time to time which:

- (a) specifies the persons to whom they may not disclose information which has been acquired in the course of the Licensee’s business about a customer of the Licensee or a customer of a Service Provider without the prior consent of that customer; and
- (b) regulates the information about any such customer, which may be disclosed without his consent.

**69.2.** The Licensee shall within three months of first offering a Value Added Service agree with the Director additional provisions for the code of practice, and confirm in writing to the Director that it has taken all reasonable steps to ensure that those of its employees who are engaged in the Supplemental Services Business are observing those additional provisions which shall:

- (a) specify the persons to whom those employees may not disclose information which has been acquired in the course of that business about a customer of the Licensee or about that customer’s business without the prior consent of that customer; and
- (b) regulate the information about any such customer or his business which may be disclosed without his consent.

**69.3.** The Licensee shall consult the Director not less than once every 3 years about the operation of the code of practice and shall make such changes to the code of practice as the Director may direct following such consultation.

**69.4.** This Condition is without prejudice to the general duties of law of the Licensee towards its customers.”

## PART K to the BT Cellnet Licence and the Vodafone Licence

### CONTROL OF INTERCONNECTION CHARGES

**70.1.** The Licensee shall take all reasonable steps to secure that the Average Interconnection Charge shall not exceed the following amounts:

- (a) during the Year 1999-2000, 11.7 pence per minute.
- (b) during the Year 2000-2001, the amount in pence per minute that is the product of 11.7 multiplied by the sum of 100% and the Controlling Percentage (deducting that Percentage if it is negative).
- (c) during the Year 2001-2002, the amount in pence per minute that is the product of the amount calculated in accordance with paragraph 70.1(b) above multiplied by the sum of 100% and the Controlling Percentage (deducting that Percentage if it is negative).
- (a) The Average Interconnection Charge shall be calculated as the average of the Interconnection Charges during the Year in question, weighted according to the profile of the Licensee's call minutes by charging period in the Base Year. Where any Interconnection Charges are in force during a part only of a Year (commencing or ending at a date in the course of the Year), the weighting shall be derived from the profile of call minutes by charging period in the corresponding part of the Base Year.
- (b) The Average Interconnection Charge shall be determined according to the Licensee's standard charges, and no account shall be taken of any discounts offered by the Licensee, whether in respect of any particular customer or any category of customers or any category of Calls.

**70.3.** The Licensee shall not make any Interconnection Charge for:

- (a) a Call which terminates on a recorded announcement provided by the Licensee informing the caller of an inability to complete the Call so as to establish a two-way path where the mobile handset used by the called party is switched off, or rings and remains unanswered, or where coverage is not available from the Licensee's system.
- (b) an unanswered Call which is diverted in respect of the period before the Call is answered.
- (a) If the Licensee has failed to secure that the Average Interconnection Charge has not exceeded the levels for the Years 1999-2000 or 2000-2001 specified in paragraph 70.1(a) or 70.1(b) above, the Licensee shall make such adjustments to its Interconnection Charges in the following Year as the Director may, after consultation with the Licensee, consider to be appropriate for the purpose of remedying that failure, and so direct the Licensee.
- (b) If it appears to the Director that the Licensee is likely to fail to secure that the Average Interconnection Charge for the Year 2001-2002 does not exceed the level specified in paragraph 70.1(c) above, the Licensee shall make such adjustments to its Interconnection Charge in that Year as the Director, after consultation with the Licensee, considers appropriate for the purpose of avoiding that failure, and so directs the Licensee.

**70.5.** In this Condition unless the context otherwise requires—

“Average Interconnection Charge” has the meaning specified in paragraph 70.2 above;

“Base Year” means the year ending on 31 March immediately preceding the Year in question;

“Call” means a circuit switched conveyance of a Message originating in a telecommunication system which is connected to any of the Applicable Systems of a fixed telecommunication system and intended to terminate on a handset connected to the system of the Licensee;

“Controlling Percentage” means in relation to any Year the amount of the change in the Retail Prices Index in the period of 12 months ending on 31 December immediately before the

beginning of that Year, expressed as a percentage (rounded to two decimal places) of that Index as at the beginning of that period, reduced by nine;

“Interconnection Charge” means the standard charge made by the Licensee for the interconnection of a Call, and “interconnection” has the same meaning as in the Interconnection Regulations;

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

“Year” means the period from 1 April to 31 March inclusive.

#### SCHEDULE 4

Regulation 3(j)

##### ANNEX A THE APPLICABLE SYSTEMS

1. The Applicable Systems are telecommunication systems of every description within the United Kingdom provided that a system (“the System”) is an Applicable System only to the extent that it satisfies each of the following conditions:

- (a) the System is one by means of which Messages are conveyed or are to be conveyed:
  - (i) from one Network Termination Point to another such Point;
  - (ii) from a Network Termination Point to another place which is neither a Network Termination Point nor a Call Office or from such a place to such a Point;
  - (iii) between a place which is neither a Network Termination Point nor a Call Office and another such place where their conveyance is not by way of provision of a service to another person; or
  - (iv) between a Call Office and any other place;but in any case not beyond a Network Termination Point;
- (b) none of the apparatus comprised in the System is Relevant Terminal Apparatus installed on premises occupied by a person to whom there are provided telecommunication services by means of the System.

2. In this Annex:

“Applicable Terminal Equipment” means apparatus which is applicable terminal equipment within the meaning of regulation 4 of the Telecommunications Terminal Equipment Regulations 1992 (S.I. 1992/2423);

“Approved Apparatus” means apparatus approved under section 22 of the Act for connection to that system or which is Compliant Terminal Equipment;

“Call Office” means telecommunication apparatus not supplied by the Licensee to any particular person but made available for use by the public or a class of the public;

“Compliant Terminal Equipment” means Applicable Terminal Equipment which satisfies the requirements of regulation 8 of the Telecommunications Terminal Equipment Regulations 1992;

“Message” means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;

“Network Connecting Apparatus” means telecommunication apparatus comprised in the Applicable Systems which is not Network Termination and Testing Apparatus and is connected to another telecommunication system;

“Network Termination and Testing Apparatus” means an item of telecommunication apparatus comprised in the Applicable Systems installed in a fixed position on Served Premises which enables:

- (i) Approved Apparatus to be readily connected to, and disconnected from, the Applicable Systems;
- (ii) the conveyance of Messages between such Apparatus and the Applicable Systems; and
- (iii) the due functioning of the Applicable Systems to be tested,

but the only other functions of which, if any, are:

- (a) to supply energy between such Apparatus and the Applicable Systems;
- (b) to protect the safety or security of the operation of the Applicable Systems; or
- (c) to enable other operations exclusively related to the running of the Applicable Systems to be performed or the due functioning of any system to which the Applicable Systems are or are to be connected to be tested (separately or together with the Applicable Systems);

“Network Termination Point” means any point:

- (i) within an item of Network Connecting Apparatus at which energy in any of the forms specified in section 4(1) of the Act is conveyed directly to or from apparatus comprised in a telecommunication system other than one in which that Network Connecting Apparatus is comprised; or
- (ii) within an item of Network Termination and Testing Apparatus at which such energy is conveyed directly to any Relevant Terminal Apparatus;
- (iii) which, in the case of a radio based telecommunication system, is the last point at which Messages are transmitted or the first point at which Messages are received in the form of electromagnetic signals by apparatus run by a person other than the Licensee and lawfully connected to that system;

“Relevant Terminal Apparatus” means:

- (i) “Terminal Apparatus”, that is to say any telecommunication apparatus installed on Served Premises except a Call Office; and
- (ii) any other telecommunication apparatus connected to the apparatus referred to in subparagraph (i) above constituting a system run under a Licence by the person using that Terminal Apparatus; and

“Served Premises” means a single set of premises in single occupation where apparatus has been installed for the purpose of the provision of telecommunication services by means of the Applicable Systems at those premises.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the telecommunications licences granted to Vodafone Limited (Vodafone), Telecom Securicor Radio Limited (BT Cellnet), Mercury Personal Communications Limited, Orange Personal Communications Services Limited and Dolphin Telecommunications Limited under section 7 of the Telecommunications Act 1984 on 9 December 1993, 22 March 1994, 9

May 1995, 27 July 1995 and 31 December 1997 respectively for the provision of mobile radio telecommunication services. The Schedules to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999 (S.I. 1999/2450) replace the Schedules to the licences, subject to certain specific amendments. The licences are being amended as part of the implementation in the United Kingdom of Directive 97/13/EC of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications (O.J. No. L199, 26.7.97, p.32), which requires that conditions in all telecommunications licences of a similar type should be harmonised, except where objectively justified in particular instances.

In the case of Vodafone and BT Cellnet the Regulations provide that where, prior to the coming into force of these Regulations, they were required under their respective licences to provide mobile radio telecommunication services to service providers they shall continue to provide such services to such persons either until the Director General of Telecommunications makes a determination in respect of each of them under Part F of their licences as modified as to whether they have market influence or until 31 March 2000, whichever is the sooner.

A Regulatory Impact Assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS.

The licences modified by these Regulations may be inspected at the Library of the Office of Telecommunications (OFTEL), 50 Ludgate Hill, London EC4M 7JJ.