

## Notice of Modification to Licence held by Bluewave Communications Limited

1. In accordance with section 10 of the Telecommunications Act 1984 (Act), the Communications Commission hereby gives notice of its intention to modify the Licence granted to Bluewave Communications Limited (Bluewave) to provide services under section 5 of the Act.
2. This follows the Commission's detailed review of Bluewave's application for licence modification, which included a business plan, financial statements and other supporting documents. The Commission's review was in accordance with its duties under section 1 of the Act to ensure that operators can finance the provision of services and to promote the interests of consumers and other users of telecommunications on the Island.
3. Bluewave is currently licensed to provide internet and internet related services. Bluewave has stated "the modification is to allow Bluewave to offer Isle of Man telephony services to residents and to be able to port numbers to and from other operators. It also allows Bluewave to gain the necessary Regulatory rights to be able to manage its Business Long Term Evolution (LTE) network in a compliant manner. Overall this will support Bluewave's investment in providing a wider and better quality service to subscribers, both business and consumer."
4. This licence modification will make Bluewave the fourth operator on the Isle of Man licensed to provide telecommunications systems of every description, alongside Manx Telecom, Sure and Wi-Manx. The addition of a fourth such operator will increase competition and is expected to increase the choice of telecommunications services available to both consumers and businesses.
5. The Licence shall be modified by replacing the conditions in Schedules 1 to 4 of the Licence in their entirety. This is to add new conditions and amend existing conditions, and to order the new and existing conditions in a manner that is consistent with other licences issued by the Commission.
6. For purposes of this notice, the new and amended conditions are set out below. In this notice, the new and amended conditions are numbered in accordance with the numbering in the modified Licence (which differs from the numbering in the current Licence). The new and amended conditions are as follows:
  - a) Schedule 1, Part 1, condition **1: Definitions** is amended to insert definitions for "network termination and testing apparatus", "public call box", "public electronic communications network", "public pay telephone", "served premises" and "textphone". Also, the definition for "network termination point" is replaced. This is to reflect terminology that may be required in the modified Licence.
  - b) Schedule 1, Part 2 is modified to insert the following conditions: **1: General Access and Interconnection Obligations, 3: Proper and Effective Functioning of the Network, 4: Emergency Call Numbers, 5: Emergency Planning, 6: Public Pay Telephones, 7: Operator Assistance, Directories and Directory Enquiry Facilities, 11: Itemised Bills, 12: Non-Payment of Bills, 13: Dispute Resolution, 14: Special Measures for End-Users with Disabilities, and 16:**

**Number Portability.** Also, in condition **2: Standardisation and Specified Interfaces**, sub-condition **2.5** is replaced; in condition **8: Requirement to Offer Contracts with Minimum Terms**, sub-condition **8.4** is replaced; and in condition **10: Metering and Billing**, sub-conditions **10.3 - 10.9** are added. These new and replaced conditions primarily relate to the provision of voice services.

- c) Schedule 1, Part 3 is modified to insert condition **25: Notification of Changes in Shareholdings**. This concerns changes in ownership. Also, in condition **24: Payment of Fees**, sub-condition **24.1** is replaced. This replacement is to state an increase in licence fee from a per annum fee of 0.5% of turnover from licensed activities in the most recent financial year with a minimum payment of £500 to an annual fee of 0.5% of turnover from licenced activities with a minimum payment of £5,000.
  - d) Schedule 1, Part 4 is modified to insert the following conditions: **29: Network Access**, **31: Carrier Selection and Pre-Selection** and **33: Leased Lines**. This is to provide a full set of conditions in relation to holding significant market power.
  - e) **Schedule 3: Communication Provider's Network** is replaced. This replacement is to state the change in Bluewave's permitted telecommunications systems from telecommunications systems providing only internet and internet related services to telecommunications systems of every description.
  - f) In **Schedule 4: Service and Connection Authorisation**, conditions **3** and **4** are replaced. This is to reflect the provision of any telecommunications services.
7. This notice will be published on the Commission website ([www.iomcc.im](http://www.iomcc.im)) and, as required under s.10(5) of the Act, a copy will be sent to the Chief Secretary.
8. Any representations or objections to this change should be made to the Commission by 13 April 2018 for the Commission's consideration.

Sue Strang

Acting Director

A person duly authorised by the Commission

15 March 2018

## **Proposed Licence Modification**

### **Telecommunications Act 1984**

Licence granted to Bluewave Communications Limited to provide services under section 5 of the Telecommunications Act 1984.

#### **Notice of Modification**

1. In accordance with its powers under the Telecommunications Act 1984 (Act), and having given notice in accordance with section 10 of the Act, the Communications Commission hereby modifies the Licence for the Running of Telecommunications Systems granted to Bluewave Communications Limited on 20 June 2008 under section 5 of the Act.
2. The Licence shall be modified by replacing the conditions in Schedules 1 to 4 of the Licence in their entirety.
3. This document shall be construed as if it formed part of the Licence.

Signed on behalf of the Communications Commission

Sue Strang

Acting Director

## SCHEDULE 1: CONDITIONS

### PART 1

#### DEFINITIONS AND INTERPRETATION RELATING TO THE CONDITIONS IN THIS SCHEDULE

##### 1. DEFINITIONS

In this Schedule, except in so far as the context otherwise requires:

**"Adoption"** means doing any of the following by the Communications Provider in relation to an Allocated Telephone Number (whether or not such Allocation is to the Communications Provider or to another provider of an Electronic Communications Network or Electronic Communications Service):

- (a) assigning or transferring that number to a particular Customer or piece of Apparatus;
- (b) using that Telephone Number for identifying a service or route used by the Communications Provider or by any of its Customers;
- (c) using that Telephone Number for identifying a communication as one to be transmitted by the Communications Provider;
- (d) designating that Telephone Number for use in selecting a service or the required elements or characteristics of a service; or
- (e) authorising the use of that Telephone Number by others for any of the following purposes:
  - (i) identifying the destination for, or recipient of, an Electronic Communication;
  - (ii) identifying the origin, or sender, of an Electronic Communication;
  - (iii) identifying the route for an Electronic Communication;
  - (iv) identifying the source from which an Electronic Communication or Electronic Communications Service may be obtained or accessed;
  - (v) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
  - (vi) identifying the provider by means of whose Electronic Communications Network or Electronic Communications Service an Electronic Communication is to be transmitted, or treated as transmitted.

**"Allocation"**, in relation to a Telephone Number, means allocation by the Commission (or such other body as the Commission may from time to time designate);

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

**"Approved Apparatus"** means, in relation to any Electronic Communications Network, Apparatus approved under section 16 or by an order made under section 21 of the Act or which meets the appropriate Essential Requirements;

**"Commission"** means the Communications Commission;

**"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;

**"Customer"** in relation to a provider of Electronic Communications Networks or Electronic Communications Services, means the following (including a person 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):

- (a) a person to whom the Electronic Communications Network or Electronic Communications Service is provided in the course of any business carried on as such by the provider;
- (b) a person to whom the provider is seeking to secure that the Electronic Communications Network or Electronic Communications Service is so provided;
- (c) a person who wishes to be so provided with the Electronic Communications Network or Electronic Communications Service, or who is likely to seek to become a person to whom the Electronic Communications Network or Electronic Communications Service is so provided;

**"Directory"** means a printed document containing Directory Information which is made available to members of the public;

**"Directory Information"** means, in the case of a Directory, the name and address and 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;

**"Dominance"** of a market means that the Communications Provider enjoys a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers. The Communications Provider is to be taken to enjoy a position of Dominance of a market if it is one of a number of persons who enjoy such a position in combination with each other. The Communications Provider, either on its own or in combination with any other person or persons, may also be taken to enjoy a position of Dominance of a market by reason wholly or partly of its or their position in a closely related market if the links between the two markets allow the market power held in the closely related market to be used in a way that influences the other market so as to

strengthen the position in the other market of the Communications Provider, either on its own or in combination with another person or persons;

**"Electronic Communication"** means a communication for transmission by means of an Electronic Communications Network;

**"Electronic Communication Apparatus"** means telecommunication apparatus as defined in section 2 of the Act;

**"Electronic Communications Network"** means a telecommunication system as defined in section 2 of the Act;

**"Electronic Communications Service"** means a telecommunication service as defined in section 2 of the Act;

**"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 Commission as providing a vital service relating to the safety of life in emergencies;

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

- (a) a person who, otherwise than as a provider of an Electronic Communications Network or Electronic Communications Service, is a Customer of the provider of that Public Electronic Communications Network or Public Electronic Communications Service;
- (b) a person who makes use of the Public Electronic Communications Network or Public Electronic Communications Service otherwise than as a provider of an Electronic Communications Network or Electronic Communications Service; or
- (c) a person who may be authorised, by a person falling within paragraph (a), so to make use of the Public Electronic Communications Network or Public Electronic Communications Service;

**"Essential Requirements"** means the essential requirements set out in regulation 4 of the Radio Equipment and Telecommunications Terminal Equipment Regulations 2000 (United Kingdom Statutory Instrument 2000 No.730) or as the Commission may from time to time specify;

**"Geographic Number"** means a Telephone Number from a range of numbers in the UK 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 assigned;

**"Interconnection"** means the linking (whether directly or indirectly by physical or logical means, or by a combination of physical and logical means) of one Public Electronic Communications Network to another for the purpose of enabling the persons using one of them to be able:

- (a) to communicate with users of the other one; or
- (b) to make use of services provided by means of the other one (whether by the provider of that Network or by another person);

**"Network Access"** means:

- (a) Interconnection of Public Electronic Communications Networks; or
- (b) any services, facilities or arrangements which are not comprised in Interconnection, but are services, facilities or arrangements by means of which a provider of Electronic Communications Networks or Electronic Communications Services or associated facilities is able, for the purposes of the provision of an Electronic Communications Service (whether by him or by another), to make use of any of the following:
  - (i) any Electronic Communications Network or Electronic Communications Service provided by another;
  - (ii) any Apparatus in such an Electronic Communications Network or used for the purposes of such an Electronic Communications Network or Electronic Communications Service; and
  - (iii) any other services or facilities which are provided or made available by another person and are capable of being used for the provision of an Electronic Communications Service,

and references to providing Network Access include references to providing any such services, making available any such facilities or entering into any such arrangements;

**"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. Where a Network Termination Point is provided at a fixed position on Served Premises it shall be within an item of Network Termination and Testing Apparatus;

**"Network Termination and Testing Apparatus"** means an item of Apparatus comprised in an Electronic Communications Network installed in a fixed position on Served Premises which enables:

- (a) Approved Apparatus to be readily connected to, and disconnected from, the Electronic Communications Network;
- (b) the conveyance of Signals between such Approved Apparatus and the Electronic Communications Network;
- (c) the due functioning of the Electronic Communications Network to be tested,

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

- (d) to supply energy between such Approved Apparatus and the Electronic Communications Network;
- (e) to protect the safety or security of the operation of the Electronic Communications Network; or
- (f) to enable other operations exclusively related to the running of the Electronic Communications Network to be performed or the due functioning of any system to which the Electronic Communications Network is or is to be connected to be tested (separately or together with the Electronic Communications Network);

**"Non-geographic Number"** means a Telephone Number from a range of numbers in the UK Telephone Numbering Plan designated for assignment to End-Users, the digit structure of which contains no geographic significance for routing calls;

**"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 Services"** means any Electronic Communications Service that is provided so as to be available for use by members of the public;

**"Publicly Available Telephone Service"** means a service available to the public for originating and receiving on-Island, UK 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 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;

**"Relevant Data Protection Legislation"** means the Data Protection Act 2002;

**"Served Premises"** means a single set of premises in single occupation where Apparatus has been installed for the purpose of the provision of Electronic Communications Services by means of an Electronic Communications Network at those premises;

**"Signal"** includes:

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in the form of sounds or visual images; and
- (d) signals serving for the actuation or control of any machinery or apparatus;

**"Significant Market Power"** in relation to a market means that the Communications Provider enjoys a position which amounts to or is equivalent to Dominance of the market;

**"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 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 an Electronic Communication;
- (d) identifying the source from which an Electronic Communication or Electronic Communications Service may be obtained or accessed;
- (e) selecting the service that is to be obtained or accessed, or required elements or characteristics of that service; or
- (f) identifying the provider by means of whose network or service an Electronic Communication is to be transmitted, or treated as transmitted,

except that any number which is used as an internet domain name, an internet address, or an address or identifier incorporating either an internet domain name or an internet address (including an email address) shall not be treated as a Telephone Number for the purposes of this Licence;

**"Textphone"** means an integrated terminal incorporating an alphanumeric keyboard and 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 and the Channel Islands;

**"UK Telephone Numbering Plan"** means the 'National Telephone Numbering Plan' published from time to time by the Director General of Telecommunications (appointed under section 1 of the Telecommunications Act 1984 (of Parliament)) or the Office of Communications; and

**"Wireless Telegraphy"** has the same meaning as in the Wireless Telegraphy Act 1949 (of Parliament).

## 2. INTERPRETATION

For the purpose of interpreting the conditions in this Schedule:

- (a) except in so far as the context otherwise requires, words or expressions shall have the meaning assigned to them in the Schedule;
- (b) headings and titles shall be disregarded; and
- (c) expressions cognate with those referred to in this Schedule shall be construed accordingly.

**PART 2**

**GENERAL CONDITIONS**

**1. GENERAL ACCESS AND INTERCONNECTION OBLIGATIONS**

**Obligation to Negotiate Interconnection**

- 1.1 The Communications Provider shall, to the extent requested by another provider of a Public Electronic Communications Network in the Island, negotiate with that provider with a view to concluding an agreement (or an amendment to an existing agreement) for Interconnection within a period which is, in the Commission's opinion, reasonable.
- 1.2 Paragraph 1.1 applies to the Communications Provider only to the extent that it provides a Public Electronic Communications Network.

**Information Obtained During Negotiations for Network Access**

- 1.3 Where the Communications Provider acquires information from another provider of an Electronic Communications Network or Electronic Communications Service before, during or after the process of negotiating Network Access and where such information is acquired in confidence, in connection with and solely for the purpose of such negotiations or arrangements, the Communications Provider shall use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored. Such information shall not be passed on to any other party (in particular other departments, subsidiaries or partners) for whom such information could provide a competitive advantage.
- 1.4 Paragraph 1.2 above does not apply to the passing of information to the Commission, where the Commission requires that information in order to carry out their functions.

## **2. STANDARDISATION AND SPECIFIED INTERFACES**

- 2.1 The Communications Provider shall comply with any relevant standards and/or specifications as are listed in the Official Journal of the European Communities for the provision of services, technical interfaces and/or network functions. Where no standards or specifications have been so published, the Communications Provider shall take full account of any relevant standards and/or specifications adopted by the European Standards Organisations.
- 2.2 In the absence of such standards and/or specifications referred to in paragraph 2.1 above, the Communications Provider shall take full account of relevant international standards or recommendations adopted by the International Telecommunication Union (ITU), the International Organisation for Standardisation (ISO) or the International Electrotechnical Committee (IEC).
- 2.3 In the absence of such standards and/or specifications referred to in paragraph 2.1 and 2.2 above, the Communications Provider shall take full account of any other standard specified by the Commission in a direction under this Condition for the purposes of service interoperability and Interconnection, provided that the Commission shall not make such a direction if an appropriate European or international standard is expected to be promulgated within a reasonable time.
- 2.4 The Commission may from time to time issue a direction under this Condition requiring a specified Network Interconnection Interface to be compliant with a specified standard. Any such direction shall be to ensure End to End Connectivity and interoperability, and shall only require compliance with a relevant standard in existence as referred to in paragraphs 2.1 to 2.3 above.
- 2.5 Subject to paragraph 2.6 below, the Communications Provider shall ensure that:
- 2.5.1 any Network Interconnection Interface provided by it which is specified in any direction under paragraph 2.4 above is compliant with the specified standard in that direction; and
  - 2.5.2 the relevant Network Interconnection Interface is available to other providers of Public Electronic Communications Networks.
- 2.6 The Communications Provider shall not be required to comply with paragraph 2.5 above where:
- 2.6.1 any other provider of a Public Electronic Communications Network seeking Interconnection with the Communications Provider's Network at the relevant Network Interconnection Point does not require it to do so; or
  - 2.6.2 to do so would require the Communications Provider to incur any cost, or resolve any technical difficulty, disproportionate to the benefits to be gained from implementing the specified standard, provided that the Communications Provider takes reasonable steps to incorporate the specified standard in its plans for network development.

2.7 For the purposes of this Condition:

2.7.1 **"End to End Connectivity"** means the facility:

- (a) for different End-Users of the same Public Electronic Communications Network or Public Electronic Communications Service to be able to communicate with each other; and
- (b) for the End-Users of different Public Electronic Communications Networks or Public Electronic Communications Services to be able, each using the network or service of which he is the End-User, to communicate with each other;

2.7.2 **"European Standards Organisations"** means the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC), and the European Telecommunications Standards Institute (ETSI);

2.7.3 **"Network Interconnection Interface"** means the Technical Characteristics of each interface at any Network Interconnection Point;

2.7.4 **"Network Interconnection Point"** means the physical location at which Interconnection between different Public Electronic Communications Networks takes place;

2.7.5 **"Technical Characteristics"** means the physical, electrical and other relevant characteristics and the network interworking and service management protocols.

**3. PROPER AND EFFECTIVE FUNCTIONING OF THE NETWORK**

- 3.1 The Communications Provider shall take all reasonably practicable steps to maintain, to the greatest extent possible:
- 3.1.1 the proper and effective functioning of the Public Telephone Network provided by it at fixed locations at all times;
  - 3.1.2 in the event of catastrophic network breakdown or in cases of force majeure the availability of the Public Telephone Network and Publicly Available Telephone Services provided by it at fixed locations; and
  - 3.1.3 uninterrupted access to Emergency Organisations as part of any Publicly Available Telephone Services offered at fixed locations.
- 3.2 The Communications Provider shall ensure that any restrictions imposed by it on access to and use of a Public Telephone Network provided by it at a fixed location on the grounds of ensuring compliance with paragraph 3.1 above are proportionate, non-discriminatory and based on objective criteria identified in advance.
- 3.3 This Condition applies to the Communications Provider only to the extent that it provides a Public Telephone Network at a fixed location and/or provides Publicly Available Telephone Services at a fixed location.

**4. EMERGENCY CALL NUMBERS**

- 4.1 The Communications Provider shall ensure that any End-User can access Emergency Organisations by using the emergency call numbers "112" and "999" at no charge and, in the case of a Pay Telephone, without having to use coins or cards.
- 4.2 The Communications Provider shall, to the extent technically feasible, make Caller Location Information for all calls to the emergency call numbers "112" and "999" available to the Emergency Organisations handling those calls.
- 4.3 In this Condition:
- 4.3.1 paragraph 4.1 only applies to the extent that the Communications Provider provides Publicly Available Telephone Services: and
- 4.3.2 paragraph 4.2 only applies to the extent that the Communications Provider provides a Public Telephone Network.
- 4.4 For the purposes of this Condition:
- 4.4.1 **"Caller Location Information"** means any data or information processed in an Electronic Communications Network indicating the geographic position of the terminal equipment of a person initiating a call;

**5. EMERGENCY PLANNING**

- 5.1 Subject to paragraph 5.3, the Communications Provider shall, on the request of and in consultation with:
- 5.1.1 the authorities responsible for Emergency Organisations; and
  - 5.1.2 such departments of central and local government as the Commission may from time to time direct for the purposes of this Condition,
- make arrangements for the provision or rapid restoration of such communications services as are practicable and may reasonably be required in Disasters.
- 5.2 Subject to paragraph 5.3, the Communications Provider shall, on request by any person as is designated for the purpose in any such arrangements, implement those arrangements insofar as is reasonable and practicable to do so.
- 5.3 Nothing in this Condition precludes the Communications Provider from:
- 5.3.1 recovering the costs incurred in making or implementing any such arrangements; or
  - 5.3.2 making the implementation of any such arrangements conditional upon being indemnified by the person for whom the arrangements are to be implemented for all costs incurred as a consequence of the implementation.
- 5.4 This Condition applies to the Communications Provider only to the extent that it provides a Public Telephone Network and/or provides Publicly Available Telephone Services.
- 5.5 For the purposes of this Condition "**Disaster**" includes any major incident having a significant effect on the general public; and for this purpose a major incident includes any incident of contamination involving radioactive substances or other toxic materials.



**6. PUBLIC PAY TELEPHONES**

- 6.1 The Communications Provider shall ensure that any End-User can access:
- 6.1.1 operator assistance services; and
  - 6.1.2 a Directory Enquiry Facility;
- from the Public Pay Telephone, except where:
- 6.1.3 the Public Pay Telephone in question is not a Public Call Box; and
  - 6.1.4 such services or facilities have been rendered inaccessible by the Communications Provider for the purposes of debt management.
- 6.2 The Communications Provider shall display and take all reasonable steps to keep displayed prominently on or around the Public Pay Telephone a notice specifying:
- 6.2.1 the minimum charge payable for connection of a call;
  - 6.2.2 the means by which the charge may be paid;
  - 6.2.3 the location of the Public Pay Telephone sufficient to enable it to be located as swiftly as possible by the Emergency Organisations;
  - 6.2.4 that calls to Emergency Organisations using the numbers "112" and "999" may be made from the Public Pay Telephone free of charge and without having to use coins or cards; and
  - 6.2.5 whether or not the Public Pay Telephone is available to receive a call, and if so, the Telephone Number of the Public Pay Telephone.
- 6.3 Where the Communications Provider provides Public Call Boxes, the Communications Provider shall also:
- 6.3.1 ensure that:
    - (a) at least 80% of the Public Call Boxes which it installs after the date of entry into force of this Licence are accessible by reasonable means to End-Users in wheelchairs; and
    - (b) at least 70% of its Public Call Boxes incorporate additional receiving amplification;
  - 6.3.2 consult the Commission from time to time on all future material changes to the design of its Public Call Boxes where the interests of disabled persons are likely to be affected to ensure that the needs and interests of disabled persons are fully taken into account in the development and provision of such telephones;
  - 6.3.3 consult the Commission from time to time and in any event as the Commission may request to ensure adequate provision, in terms of numbers and locations, of its Public Call Boxes incorporating Textphone facilities. Where the Commission is

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satisfied, following due investigation and discussion with the Communications Provider, that such provision is inadequate, they may direct the Communications Provider to provide Public Call Box Textphone facilities as they deem appropriate in terms of numbers and location; and

6.3.4 only be entitled to cease to provide or to cease to secure the provision of Publicly Available Telephone Services to and from a Public Call Box if it has installed prominently on or around that Public Call Box (and has taken all reasonable steps to keep so displayed for the period mentioned below) a notice specifying:

(a) that the Communications Provider is proposing that such Services shall cease to be provided at such a Public Call Box on the expiration of the period set out in the notice (being not less than 42 days commencing with the day on which the notice is first displayed); and

(b) the name and address of the Communications Provider,

and such period has expired.

6.4 This Condition only applies to the Communications Provider to the extent that it provides a Public Pay Telephone.

## **7. OPERATOR ASSISTANCE, DIRECTORIES AND DIRECTORY ENQUIRY FACILITIES**

7.1 The Communications Provider shall ensure that any End-User can access:

7.1.1 operator assistance services;

7.1.2 a Directory Enquiry Facility containing Directory Information on all Subscribers in the Island who have been assigned Telephone Numbers by any provider of Publicly Available Telephone Services in the Island, except those Subscribers who have requested that their Directory Information be removed;

7.1.3 a Directory Enquiry Facility containing Directory Information on all Subscribers in the UK who have been assigned Telephone Numbers by any provider of Publicly Available Telephone Services in the UK, except those Subscribers who have requested that their Directory Information be removed; and

7.1.4 an International Directory Enquiry Facility,

except where such services or facilities have been rendered inaccessible to a particular End-User by the Communications Provider at the End-User's request or for the purposes of debt management.

7.2 Where the Communications Provider assigns Telephone Numbers to Subscribers, it shall ensure that each of those Subscribers is, on request, supplied with a Directory containing Directory Information on all Subscribers who have been assigned Telephone Numbers in the Island. Directories containing Directory Information for Subscribers in the UK who have been assigned Telephone Numbers by any provider of Publicly Available Telephone Services must be supplied to the Subscriber on request. Any Directories supplied shall not contain Directory Information for those Subscribers who have requested that their Directory Information be removed.

7.3 A Directory may be produced by the Communications Provider, or by another person. Where a Directory is produced by the Communications Provider, the Communications Provider shall ensure that it is updated on a regular basis (at least once a year). The Commission may from time to time direct that a Directory is available in a particular form.

7.4 The Communications Provider may charge End-Users a reasonable fee for making available a Directory Enquiry Facility, Island Directory and any additional or UK Directories, and may charge its Subscribers a reasonable fee for inclusion of Directory Information in a Directory or as part of a Directory Enquiry Facility.

7.5 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

7.6 This Condition applies to the Communications Provider to the extent that it provides Publicly Available Telephone Services (except Public Pay Telephones).

7.7 For the purposes of this Condition, an "**International Directory Enquiry Facility**" means the provision by means of a Public Telephone Network of a Telephone Number, or information that the Telephone Number may not be supplied, of any natural or legal person located outside both the Island and the UK.

**8. REQUIREMENT TO OFFER CONTRACTS WITH MINIMUM TERMS**

- 8.1 The Communications Provider shall, in offering to provide, or providing, Public Electronic Communications Services to a Consumer, and on the request of that Consumer, offer to enter into a contract or vary an existing contract with that Consumer which complies with paragraph 8.2.
- 8.2 Any contract between the Communications Provider and a Consumer shall specify the following minimum requirements:
- 8.2.1 the identity and address of the Communications Provider;
  - 8.2.2 the services provided, details of the service quality levels offered and the time for initial connection;
  - 8.2.3 the types of maintenance services offered;
  - 8.2.4 particulars of prices and tariffs, and the means by which up-to-date information on all applicable tariffs and maintenance charges may be obtained;
  - 8.2.5 the duration of the contract, the conditions for renewal and termination of services and of the contract;
  - 8.2.6 any applicable compensation and/or the refund arrangements which will apply if contracted quality service levels are not met; and
  - 8.2.7 the method of initiating procedures for settlement of disputes in respect of the contract.
- 8.3 Where the Communications Provider intends to modify a condition in a contract with a Consumer which is likely to be of material detriment to the Consumer, the Communications Provider shall:
- 8.3.1 provide the Consumer with at least one month's notice of its intention detailing the proposed modification; and
  - 8.3.2 inform the Consumer of the ability to terminate the contract without penalty if the proposed modification is not acceptable to the Consumer.
- 8.4 This Condition applies to the Communications Provider only to the extent that it provides Public Electronic Communications Services, excluding any service which is a broadcast of television or radio programmes for general reception in, or in any area in, the Island, where every member of the intended audience of such a service is able to receive that service in an intelligible form and free of charge.

**9. QUALITY OF SERVICE**

- 9.1 The Communications Provider shall, on the direction of the Commission, publish comparable, adequate and up to date information for End-Users on the quality of its services.
- 9.2 Subject to paragraph 9.3, where the Commission make a direction under paragraph 8.1 they may amongst other things direct:
- 9.2.1 the quality of service parameters to be measured;
  - 9.2.2 the content and form of the information to be published, and how the comparability of the information is to be validated. For the purposes of validation, the Commission may require independent audit of the specified information, the costs of such independent audit to be for the account of the Commission;
  - 9.2.3 the manner of publication of the information;
  - 9.2.4 the timing of publication of the information; and/or
  - 9.2.5 that the Communications Provider shall provide the Commission with a copy of the information to be published well in advance of the publication as agreed by the Commission.
- 9.3 The Commission shall only make such a direction where the Communications Provider has been providing the Public Electronic Communication Services in question for at least 18 months prior to the direction being made.
- 9.4 This Condition applies to the Communications Provider only to the extent that it provides Public Electronic Communications Services.

## 10. METERING AND BILLING

- 10.1 The Communications Provider shall not render any bill to an End-User in respect of the provision of any Public Electronic Communications Services unless every amount stated in that bill represents and does not exceed the true extent of any such Service actually provided to the End-User in question.
- 10.2 The Communications Provider shall retain such Records as may be necessary for the purpose of establishing its compliance with paragraph 10.1 above. Subject to the following, the Commission may from time to time direct the minimum period for retention of necessary Records by the Communications Provider. This paragraph (and any direction of the Commission made under it) applies subject to the requirements of Relevant Data Protection Legislation, and shall not require the Communications Provider to retain any Records for the purposes of this Condition for more than 15 months from the date on which they were created.
- 10.3 Paragraphs 10.4 to 10.8 shall only apply to the Communications Provider where:
- 10.3.1 it is a provider of Publicly Available Telephone Services; and
  - 10.3.2 it has a Relevant Turnover in its most recent complete financial year exceeding £5 million.
- 10.4 Subject to paragraph 10.3, the Communications Provider shall apply to an Approval Body for Approval of its Total Metering and Billing System, and shall obtain such Approval, as soon as is practicable. The Communications Provider shall comply with any directions made by the Approval Body in respect of such Approval. For the avoidance of doubt, this obligation applies in respect of any Total Metering and Billing System, whether already in use or newly installed.
- 10.5 Subject to paragraph 10.3, the Communications Provider shall not keep in use any part of its Total Metering and Billing System for which an application for Approval has not been made or Approval has not been granted within 12 months of this Licence coming into force.
- 10.6 Where an Approval Body does not grant or withdraws Approval from all or part of the Communications Provider's Total Metering and Billing System, the Communications Provider shall, as soon as is reasonably practicable either:
- 10.6.1 inform the Commission of the action to be taken by the Communications Provider to remedy the absence of Approval and the anticipated date of such Approval; or
  - 10.6.2 inform the Commission that the Communications Provider intends to cease use of that Total Metering and Billing System (or that part of it) in accordance with a timetable for its withdrawal which the Communications Provider shall provide to the Commission on request.
- 10.7 Where, immediately prior to this Licence coming into force, the Communications Provider held approval for any meter used by it in providing Publicly Available Telephone Services under section 17 of the Act ("**prior approval**"), that prior approval shall continue to have

effect until such time as the Communications Provider's Total Metering and Billing System is granted Approval.

10.8 This Condition applies to the Communications Provider only to the extent that it provides Public Electronic Communications Services.

10.9 For the purposes of this Condition:

10.9.1 "**Approval**" means an approval granted by an Approval Body where the Communications Provider's Total Metering and Billing System is compliant with the standard set out in the Commission Metering and Billing Direction;

10.9.2 "**Approval Body**" means a body appointed by Ofcom, the UK Regulator, to operate the Ofcom Metering and Billing Scheme.

10.9.3 "**Commission Metering and Billing Direction**" means a direction made by the Commission from time to time under this Condition setting out various requirements relating to metering and billing accuracy;

10.9.4 "**Records**" means data or information showing the extent of any network or service actually provided to an End-User and any data or information used in the creation of a bill for an End-User;

10.9.5 "**Relevant Turnover**" means annual turnover attributable to the provision of Publicly Available Telephone Services after the deduction of sales rebates, value added tax and other taxes directly related to turnover;

10.9.6 "**Total Metering and Billing System**" means the totality of all equipment, data, procedures and activities used to determine the charges to be sought for provision and usage of Electronic Communication Services, and/or to present these charges on End User's bills. For purposes of clarity, a Total Metering and Billing System incorporates all processing steps from the original recording of a chargeable event to its readiness for presentation on a bill to the End User whether performed by one or more providers of Electronic Communications Networks or Electronic Communications Services.

**11. ITEMISED BILLS**

- 11.1 The Communications Provider shall provide to each of its Subscribers, on request, a basic level of itemised billing, either at no extra charge or for a fee which is, in the opinion of the Commission, reasonable. The Communications Provider shall ensure that each itemised bill shows a sufficient level of detail to allow the Subscriber to:
- 11.1.1 verify and control the charges incurred by the Subscriber in using a Public Telephone Network and/or related Publicly Available Telephone Services; and
  - 11.1.2 adequately monitor the Subscriber's usage and expenditure and thereby exercise a reasonable degree of control over their bills.
- 11.2 The Commission may from time to time direct the minimum level of itemisation to be provided by the Communications Provider.
- 11.3 The Communications Provider 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.
- 11.4 The Communications Provider shall not be subject to this Condition in respect of any Subscriber where:
- 11.4.1 it provides Publicly Available Telephone Services to the Subscriber on a pre-paid basis; and
  - 11.4.2 the Subscriber has an alternative means, free of charge, of adequately monitoring the Subscriber's usage and expenditure.
- 11.5 This Condition applies to the Communications Provider only to the extent that it provides Publicly Available Telephone Services.
- 11.6 For the purposes of this Condition "**Subscriber**" means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.



**12. NON-PAYMENT OF BILLS**

- 12.1 Where a Subscriber of the Communications Provider has not paid the Communications Provider all or part of a bill for Publicly Available Telephone Services provided by the Communications Provider, any measures taken by the Communications Provider to effect payment or disconnection shall:
- 12.1.1 be proportionate and not unduly discriminatory;
  - 12.1.2 give due warning to the Subscriber beforehand of any consequent service interruption or disconnection; and
  - 12.1.3 except in cases of fraud, persistent late payment or non-payment, confine any service interruption to the service concerned, as far as technically feasible.
- 12.2 The Communications Provider shall publish details of measures it may take to effect payment or disconnection in accordance with paragraph 12.1 above, by:
- 12.2.1 sending a copy of such information or any appropriate parts of it to any Subscriber who may request such a copy; and
  - 12.2.2 placing a copy of such information on any relevant website operated or controlled by the Communications Provider.
- 12.3 This Condition applies to the Communications Provider only to the extent that it provides Publicly Available Telephone Services at a fixed location.
- 12.4 For the purposes of this Condition "**Subscriber**" means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.

### **13. DISPUTE RESOLUTION**

#### **Basic Code of Practice regarding provision of Public Electronic Communications Services**

13.1 The Communications Provider shall produce a basic code of practice for its Domestic and Small Business Customers which sets out at least where such Customers may avail themselves of the information relevant to the provision of Public Electronic Communications Services. The code of practice shall be drafted in language which is easy to understand, and copies of the code of practice shall be provided on request and free of charge to any Domestic and Small Business Customer.

#### **Codes of Practice for Complaints**

13.2 Within six months of this Licence entering into force, the Communications Provider shall establish and thereafter maintain procedures that conform with any applicable Code of Practice for Complaints for the handling of complaints made by its Domestic and Small Business Customers in relation to the provision of Public Electronic Communications Services.

#### **Dispute resolution**

13.3 The Communications Provider shall establish and maintain, or otherwise implement and comply with, dispute resolution procedures for the resolution of disputes between it and any of its Domestic and Small Business Customers. Such procedures shall:

13.3.1 enable disputes to be settled fairly and promptly;

13.3.2 be easy to use, transparent and effective; and

13.3.3 be free of charge to any Domestic and Small Business Customer using the procedures.

13.4 This Condition applies to the Communications Provider only to the extent that it provides Public Electronic Communication Services to Domestic and Small Business Customers.

13.5 For the purposes of this Condition:

13.5.1 "**Code of Practice for Complaints**" means a code of practice approved from time to time by the Commission for the purpose of this Condition;

13.5.2 "**Domestic and Small Business Customer**" means a Customer of the Communications Provider who is neither:

(a) himself a provider of Public Electronic Communications Network or Public Electronic Communications Services; nor

(b) a Customer in respect of an undertaking carried on by him for which more than ten individuals work (whether as employees or volunteers or otherwise).

**14. SPECIAL MEASURES FOR END-USERS WITH DISABILITIES**

- 14.1 The Communications Provider shall from time to time consult the Commission or such body or bodies as the Commission may direct from time to time to ensure that the requirements and interests of disabled End-Users are fully taken into account in the development and provision of its services.
- 14.2 Subject to paragraph 14.9, the Communications Provider shall ensure that any End-User of its services who is so visually impaired or otherwise disabled as to be unable to use a printed Directory, can access, free of charge, Directory Information and Directory Enquiry Facilities in a form which is appropriate to meet their needs. The Communications Provider shall ensure that such a Directory Enquiry Facility is capable of connecting such an End-User to a requested Telephone Number at the request of that End-User.
- 14.3 Subject to paragraph 14.9, the Communications Provider shall ensure that such of its Subscribers who, because of their disabilities, need to make calls in which some or all of the call is made or received in text format, are able to access a Relay Service. Such Subscribers shall be charged for the conveyance of messages to which a Relay Service applies at no more than the equivalent price as if that conveyance had been made directly between the caller and the called person without use of a Relay Service:
- 14.3.1 except that the calling person may be charged standard local prices for the call made to a Relay Service provider in order to make a call irrespective of whether the call is successful; and
  - 14.3.2 applying a special tariff scheme designed to compensate Subscribers who need to make calls to which a Relay Service applies for the additional time to make telephone calls using a Relay Service.
- 14.4 Subject to paragraph 14.9, the Communications Provider shall ensure that any End-Users of its services who need to make calls to which a Relay Service applies:
- 14.4.1 have access to Emergency Organisations, operator assistance services and a Directory Enquiry Facility using short code numbers; and
  - 14.4.2 are able to receive call progress voice announcements in a suitable form.
- 14.5 Subject to paragraph 14.9, the Communications Provider shall provide a priority Fault Repair Service as swiftly as practicable to any Subscriber with disabilities who has a genuine need for an urgent repair. Charges for a priority Fault Repair Service shall not exceed the Communications Provider's standard charge for a Fault Repair Service.
- 14.6 Subject to paragraph 14.9, the Communications Provider shall ensure that such of its Subscribers who are so disabled such that they are dependent on the telephone are able to participate in a scheme to safeguard telephone services to such Subscribers. The scheme shall:

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- 14.6.1 enable such Subscribers to give prior notification to the Communications Provider of a nominee to whom:
    - (a) that Subscriber's telephone bill shall initially be sent; or
    - (b) any enquiry to establish why a telephone bill has not been paid shall be made;
  - 14.6.2 permit the nominee to pay that Subscriber's bill on their behalf;
  - 14.6.3 require the nominee to give prior consent to the Communications Provider to act in such capacity;
  - 14.6.4 not require the nominee to accept liability to pay the telephone bills of that Subscriber; and
  - 14.6.5 be provided at no cost to such a Subscriber.
- 14.7 Subject to paragraph 14.9, the Communications Provider shall make available, free of charge, and in a format reasonably acceptable to any Subscriber who is blind or whose vision is impaired, upon their request:
- 14.7.1 any contract (or any subsequent variation) with that Subscriber for the provision of Publicly Available Telephone Services, including any publicly available terms or conditions referred to in that contract or variation;
  - 14.7.2 any bill rendered in respect of those services.
- An acceptable format would, for these purposes, consist of print large enough for such Subscriber to read, Braille or electronic format appropriate to the reasonable needs of the Subscriber.
- 14.8 Subject to paragraph 14.9, the Communications Provider shall take all reasonable steps to ensure that the services which it provides in order to comply with the obligations contained in paragraphs 14.1 to 14.7 above are widely publicised, taking into consideration the need to disseminate information in appropriate formats through appropriate channels for disabled End-Users.
- 14.9 Where, prior to the entry into force of this Condition, the Communications Provider was not required, by virtue of any condition to a licence granted under section 5 of the Act, to provide equivalent services and facilities to those required by paragraphs 14.2 to 14.8 above, the Communications Provider shall comply with those paragraphs by no later than 12 months after the coming into force of this Condition.
- 14.10 This Condition applies to the Communications Provider only to the extent that it provides Publicly Available Telephone Services at a fixed location.
- 14.11 For the purposes of this Condition:
- 14.11.1 **"Fault Repair Service"** means a service consisting of such repair, maintenance, adjustment or replacement of any part of the Communications Provider's Network,

or such repair or adjustment of any connected or connectable Electronic Communications Network, or such repair or replacement of any Apparatus for which the Communications Provider has undertaken the responsibility for repair and maintenance, as is necessary to restore and maintain a sufficient service;

14.11.2 "**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 Commission to be a text relay service for the purposes of this Condition;

14.11.3 "**Subscriber**" means an End-User who is party to a contract with the Communications Provider for the provision of Publicly Available Telephone Services.

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## **15. ALLOCATION ADOPTION AND USE OF TELEPHONE NUMBERS**

### **General Prohibitions on Adoption and Use**

- 15.1 The Communications Provider shall not Adopt Telephone Numbers from the UK Telephone Numbering Plan unless:
- 15.1.1 the Telephone Numbers have been Allocated to the Communications Provider; or
  - 15.1.2 the Communications Provider has been authorised (either directly or indirectly) to Adopt those Telephone Numbers by the person Allocated those Telephone Numbers.
- 15.2 The Communications Provider may only use a Telephone Number from the UK Telephone Numbering Plan where that Telephone Number has been Allocated to a person, unless the use in question is for the purposes of indicating that the Telephone Number has not been Allocated.
- 15.3 The Commission may from time to time specify certain Telephone Numbers which the Communications Provider may only use (or, where specified, Adopt) where such use or Adoption is in accordance with the designation attributed to that Telephone Number by the Commission.

### **Requirements in Connection with the Adoption of Telephone Numbers**

- 15.4 The Communications Provider shall have a Numbering Plan for such Telephone Numbers as may be Allocated to it from time to time. Except where the Commission otherwise consents in writing, such Numbering Plan shall be consistent with the UK Telephone Numbering Plan. When applying for Telephone Numbers, the Communications Provider shall provide such details of its Numbering Plan to the Commission (or such other body as the Commission may from time to time designate) as are relevant to the application.
- 15.5 The Communications Provider shall install, maintain and adjust its Public Electronic Communications Network so that it routes Signals and otherwise operates in accordance with the UK Telephone Numbering Plan and any Allocation of Telephone Numbers.
- 15.6 Where Telephone Numbers have been Allocated to the Communications Provider, it shall secure that such Telephone Numbers are used effectively and efficiently.
- 15.7 The Communications Provider shall not unduly discriminate against another provider of Electronic Communications Networks or Electronic Communications Services in relation to its Adoption or use of Telephone Numbers for purposes connected with the use by such other provider, or its Customers, of any Electronic Communications Network or Electronic Communications Service.
- 15.8 The Communications Provider shall take all steps, which in the opinion of the Commission are reasonably practicable, to secure that its Customers, in using Telephone Numbers, comply with the provisions of this Condition, where applicable, and the provisions of the UK Telephone Numbering Plan.

### **Application for Allocation or Reservation of Telephone Numbers**

- 15.9 When applying for an Allocation or reservation of Telephone Numbers, the Communications Provider shall:
- 15.9.1 use an appropriate application form as directed by the Commission (or such other body as the Commission may from time to time designate) from time to time as they think fit;
  - 15.9.2 provide such information as is required by such application form; and
  - 15.9.3 provide to the Commission (or such other body as the Commission may from time to time designate), on request, any other information considered by the Commission (or such other body as the Commission may from time to time designate) to be relevant to the application, and the supply of which does not place an undue burden on the Communications Provider.

### **Withdrawal of a Number Allocation**

- 15.10 It is hereby declared that the Commission may withdraw an Allocation of Telephone Numbers from the Communications Provider where:
- 15.10.1 the Communications Provider has not Adopted those Telephone Numbers within six months from the date on which the Telephone Numbers were Allocated; or
  - 15.10.2 in relation to an Allocation of a series of Telephone Numbers, the Communications Provider has not Adopted those Telephone Numbers to any significant extent within six months from the date on which the series of Telephone Numbers was Allocated.
- 15.11 For the purposes of this Condition, "**Numbering Plan**" means a plan describing the method used or to be used for the Adoption of a Telephone Number by the Communications Provider.

**16. NUMBER PORTABILITY**

16.1 The Communications Provider shall provide Number Portability to any of its Subscribers who so requests, as soon as it is reasonably practicable and on terms, including charges, which in the opinion of the Commission are reasonable.

16.2 For the purposes of this Condition:

16.2.1 "**Number Portability**" means a facility whereby Subscribers who so request can retain their Telephone Number on a Public Telephone Network in the Island, independently of the person providing the service at the Network Termination Point of a Subscriber:

(a) in the case of Geographic Numbers, at a specific location; or

(b) in the case of Non-geographic Numbers, at any location,

provided that such retention of a Telephone Number is in accordance with the UK Telephone Numbering Plan;

16.2.2 "**Subscriber**" means any person who is party to a contract with the provider of Publicly Available Telephone Services for the supply of such Services in the Island.



**17. PROVISION OF DIRECTORY INFORMATION**

17.1 Where the Communications Provider has been Allocated Telephone Numbers in accordance with Condition 15, it shall meet all reasonable requests from any person to make available the Directory Information of:

17.1.1 its Subscribers who have been assigned those Telephone Numbers; and

17.1.2 any other End-User assigned a Telephone Number originally Allocated to the Communications Provider,

for the purposes of the provision of Directories and Directory Enquiry Facilities.

17.2 Where the Communications Provider has been authorised (either directly or indirectly) to use Telephone Numbers Allocated to another person, it shall on request supply to:

17.2.1 the person who was originally Allocated such Telephone Numbers; or

17.2.2 if different from the above, the person who authorised the use of such Telephone Numbers by it,

the Directory Information of the Communications Provider's Subscribers and of any other End-User assigned a Telephone Number from such Telephone Numbers.

17.3 Where the Communications Provider is requested to supply Directory Information in accordance with paragraphs 17.1 or 17.2, it shall do so on terms which are fair, cost-oriented and non-discriminatory, and in a format which is agreed between the Communications Provider and the person requesting the information.

17.4 This Condition applies subject to the requirements of Relevant Data Protection Legislation.

**18. NON-GEOGRAPHIC NUMBERS**

- 18.1 Where the Communications Provider Adopts Non-geographic Numbers, it shall ensure, where technically and economically feasible, that End-Users in any part of the UK are able to access those Non-geographic Numbers.
- 18.2 The Communications Provider shall limit access by calling End-Users located in specific geographical areas to Non-geographic Numbers assigned to a Subscriber where that Subscriber has chosen for commercial reasons to limit such access.

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**PART 3**

**ADDITIONAL GENERAL CONDITIONS**

**19. FAIR TRADING CONDITION**

- 19.1 The Communications Provider shall not engage in conduct, either alone or with other undertakings, which:
- 19.1.1 amounts to an abuse of a position of Dominance in a market within the Island or a substantial part of it;
  - 19.1.2 may affect trade within the Island; and
  - 19.1.3 relates to activities connected with telecommunications matters.
- 19.2 Conduct may, in particular, constitute such an abuse if it consists in:
- 19.2.1 directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
  - 19.2.2 limiting production, markets or technical development to the prejudice of consumers;
  - 19.2.3 applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
  - 19.2.4 making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- 19.3 The Communications Provider shall not make (including implement) any agreement, comply with any decision of any association of undertakings or carry on any concerted practice with any other undertaking which is or is intended to be implemented in the Island and which:
- 19.3.1 may affect trade within the Island;
  - 19.3.2 has the object or effect of preventing, restricting or distorting competition within the Island; and
  - 19.3.3 relates to activities connected with telecommunications matters.
- 19.4 The prohibition in paragraph 19.3 applies, in particular, to agreements, decisions or practices which:
- 19.4.1 directly or indirectly fix purchase or selling prices or any other trading conditions;
  - 19.4.2 limit or control production, markets, technical development or investment;
  - 19.4.3 share markets or sources of supply;
  - 19.4.4 apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

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- 19.4.5 make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
- 19.5 The prohibition in paragraph 19.3 shall not apply to any agreement decision or concerted practice which the Commission considers will:
- 19.5.1 contribute to:
- (a) improving the provision of any goods or services; or
  - (b) promoting technical or economic progress,
- while allowing consumers a fair share of the resulting benefit; but
- 19.5.2 does not:
- (a) impose on the undertakings concerned restrictions which are not indispensable to attaining those objectives; or
  - (b) afford such parties the possibility of eliminating competition in respect of a substantial part of the products in question.
- 19.6 The prohibitions in paragraphs 19.1 and 19.3 shall not apply where the relevant conduct, agreement, decision or concerted practice:
- 19.6.1 has or would have no appreciable effect on competition; or
- 19.6.2 has or would have no effect on competition between persons engaged in commercial activities connected with telecommunications and it would have no effect on users of telecommunication services.
- 19.7 This Condition does not apply to any conduct, agreement, decision or concerted practice which is the subject of an investigation under Part 2 of the Fair Trading Act 1996.
- 19.8 Whether any act or omission is prohibited by this Condition shall be determined by the Commission in such a manner to ensure that so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising under this Condition in relation to competition within the Island are dealt with in a manner which takes account of the treatment of corresponding questions under generally accepted principles of competition law as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island.
- 19.9 This Condition shall not limit or affect in any way the Communications Provider's obligations arising under any other Condition of this Licence.
- 19.10 On the coming into force of any Act or subordinate legislation which contains a prohibition enforceable by the Commission, or gives to the Commission the power to enforce an existing prohibition, of any behaviour prohibited under this Condition, this Condition will

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cease to apply to the behaviour prohibited by or the prohibition enforceable by such Act or subordinate legislation.

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## **20. CONTROLLED PREMIUM RATE SERVICES**

### 20.1 Where:

20.1.1 the Communications Provider provides a Controlled Premium Rate Service in whole or in part by means of its Public Electronic Communications Network (whether or not Signals comprised in, or resulting from the provision of, such services have previously been, or are subsequently conveyed by, any other Public Electronic Communications Network); or

20.1.2 the Communications Provider provides an Electronic Communications Service to another person by means of its Public Electronic Communications Network by means of which that person, to the knowledge of the Communications Provider, provides a Controlled Premium Rate Service (whether or not Signals comprised in, or resulting from the provision of, such services have previously been, or are subsequently conveyed by, any other Public Electronic Communications Network),

the Communications Provider shall comply with the provisions of such a code of practice as may be directed by the Commission from time to time for the purposes of this Condition. Such code of practice shall relate to any description of Controlled Premium Rate Service or to all Controlled Premium Rate Services, and shall be applied and administered by a body of persons specified in the direction by the Commission.

### 20.2 The Commission may determine, subject to such conditions as they think fit, that:

20.2.1 any Controlled Premium Rate Service of any description, or any individually specified Controlled Premium Rate Service provided by a person named in the determination, is not to be treated as a Controlled Premium Rate Service for the purpose of this Condition; and

20.2.2 any individually specified Controlled Premium Rate Service in respect of which a determination under sub-paragraph 20.2.1 above has been made or which is within a description of Controlled Premium Rate Services in respect of which such a determination has been made, is to be treated as Controlled Premium Rate Service for the purposes of this Condition notwithstanding such determination,

and, where a determination of the kind specified in sub-paragraph 20.2.1 above is made, the provisions of this Condition shall apply to such a service from the date specified in the determination.

### 20.3 In this Condition, subject to paragraph 20.4 below and any determination made by the Commission pursuant to paragraph 20.2 above, a Controlled Premium Rate Service (other than a Find-me-anywhere Service) is one in respect of which:

20.3.1 the person responsible for paying the charges for the Call by means of which the Service is obtained is billed by means of his telephone bill for any amount in respect of the provision of the Service;

20.3.2 part of the overall charge paid by that person to the Communications Provider for the Service, being payment for the content of the Call or other product or service

delivered in the course of, or as a direct consequence of, the Call, is passed on by the Communications Provider, directly or indirectly, to the person providing the Service (or, where that person is the Communications Provider itself, to that part of the Communications Provider's business which provides the Service and is credited with revenue from that part of its business which conveys the Signals comprised in, or resulting from the provision of, the Service); and

20.3.3 either:

- (a) the charge for the Call by means of which the Service is obtained or the rate according to which such Call is charged is a charge or rate which exceeds any amount determined by the Commission; or
- (b) the Service is a Chatline Service.

20.4 For the purposes of paragraph 20.3.3(a), the Commission shall determine, from time to time an amount for the charge of the Call by means of which the Controlled Premium Rate Service is obtained or the rate according to which such Call is charged or both which, when exceeded, means that paragraph 20.3.3(a) is satisfied. In making such a determination, the Commission shall have regard to the prevailing standard rates for premium rate calls of providers providing Controlled Premium Rate Services from time to time.

20.5 A call which terminates on a Public Electronic Communications Network outside the Island is not a Controlled Premium Rate Service.

20.6 For the purposes of this Condition:

20.6.1 "**Call**" includes a call made by a computer or made automatically by any other terminal apparatus;

20.6.2 "**Chatline Service**" means a service which consists of or includes the enabling of more than two persons (the participants) simultaneously to conduct a telephone conversation without either:

- (a) each of them having agreed with each other; or
- (b) one or more of them having agreed with the person enabling such a telephone conversation to be conducted,

in advance of making the Call enabling them to engage in the conversation, the respective identities of the other intended participants or the Telephone Numbers on which they can be called. For the avoidance of any doubt, a service by which one or more additional persons who are known (by name or Telephone Number) to one or more of the parties conducting an established telephone conversation can be added to that conversation by means of being called by one or more of such parties is not on that account a Chatline Service, if it would otherwise not be regarded as such a service;

20.6.3 "**Controlled Premium Rate Service**" has the meaning given to it in paragraph 20.3;

- 20.6.4 **"Find-me-anywhere Service"** means a service that enables a person to be contacted, whatever the location of that person, where the call charge is not distance dependant, and for which purpose a particular series of Telephone Numbers have been designated for such Find-me-anywhere Services under the UK Telephone Numbering Plan.

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**21. AUTOMATIC CALLING EQUIPMENT**

21.1 This Condition applies where:

21.1.1 the Communications Provider initiates automatically in accordance with stored instructions a sequence of voice and/or facsimile calls; and

21.1.2 the Communications Provider intends or reasonably expects to transmit for reception by persons at some or all of the destinations so called a voice and/or facsimile call which:

(a) does not consist of live speech;

(b) is for the purpose of the transmission or reception of facsimile messages; or

(c) is for the purpose of identifying whether Apparatus addressed by the Telephone Number so called is capable of the transmission or reception of facsimile messages.

21.2 Except insofar as the Commission consent in writing otherwise, the Communications Provider shall be required to:

21.2.1 ensure each recipient of calls referred to in paragraph 21.1 has, prior to the call being initiated, consented to receive such calls; and

21.2.2 maintain, or secure that there is maintained, a record giving particulars of the persons referred to in paragraph 21.2.1.

21.3 The Communications Provider shall, where one or more of the calls referred to in paragraph 20.1 constitutes Signals comprising of matter that has been recorded, ensure that the matter which has been recorded includes:

21.3.1 a contact name; and

21.3.2 either a contact address or a contact freephone telephone number,

for the person or organisation on whose behalf the call was initiated.

21.4 This Condition does not apply to any services which the Communications Provider supplies pursuant to Condition 5.

**22. REQUIREMENT TO FURNISH INFORMATION TO THE COMMISSION**

- 22.1 Without prejudice to any other provision in this Licence or other relevant legislation relating to the provision of information, the Communications Provider shall furnish to the Commission, in such manner and at such times as the Commission may reasonably request, such documents, accounts, estimates, returns or other information as the Commission may reasonably require for the purpose of verifying that the Communications Provider is complying with the Conditions of this Licence and for statistical purposes.
- 22.2 In making any such request, the Commission must ensure that:
- 22.2.1 any such request sets out the Commission's reasons for requiring such information and, in particular, where the request is for statistical purposes, defines the statistical purposes for which the information is required; and
  - 22.2.2 no undue burden is imposed on the Communications Provider in procuring and furnishing such information and, in particular, the Communications Provider is not required to procure or furnish information which would not normally be available to it unless the Commission considers that the particular information is essential for the purposes set out in accordance with paragraph 22.2.1 above; and
  - 22.2.3 any such request is proportionate and objectively justified, taking into account:
    - (a) the Commission's reasons for requiring such information;
    - (b) the amount of information that the Commission requires; and
    - (c) the burden likely to be imposed on the Communications Provider, including any likely cost implications.

**23. LICENSEE'S GROUP**

23.1 Without prejudice to the Communications Provider's obligations under this Licence in respect, in particular, of anything done on its behalf, where:

23.1.1 the Commission determines either:

- (a) that a member of the Provider's Group has done something which would, if it had been done by the Communications Provider, not be authorised under this Licence; or
- (b) that a member of the Provider's Group has done something which would, if it had been done by the Communications Provider, require the Communications Provider to take or refrain from taking a particular action under the Licence and that neither the Communications Provider nor the member has met that further requirement; and

23.1.2 the Commission is not satisfied that the Communications Provider has taken all reasonable steps to prevent any member acting in that way,

then the Commission may direct the Communications Provider to take such steps as the Commission deems appropriate for the purpose of remedying the matter.

23.2 Where any person becomes a member of the Provider's Group then the Communications Provider shall not be subject to this Condition with respect to that person before it is reasonably practicable but shall be so not later than one year after that person becomes such a member or such later date as the Commission may determine.

23.3 This Condition shall not apply to any particular member of the Provider's Group if and to the extent that the Commission so determines.

23.4 For the purposes of this Condition:

23.4.1 "**Group**" means a Holding Company and its Subsidiary Company or Companies;

23.4.2 "**Provider's Group**" means a Group in respect of which the Communications Provider is either a Holding Company or a Subsidiary Company;

23.4.3 "**Holding Company**" has the same meaning as in section 1(4) of the Companies Act 1974.

23.4.4 "**Subsidiary Company**" has the same meaning as "subsidiary" in section 1 of the Companies Act 1974.

**24. PAYMENT OF FEES**

24.1 The Communications Provider shall pay, or cause to be paid, to the Treasury:

24.1.1 On [licence modification date] the sum of £5,000 (five thousand pounds); and

24.1.2 on [anniversary of licence modification date] and annually thereafter:

(a) on the first £1,000,000 (one million pounds) of Turnover, a fixed sum of £5,000 (five thousand pounds); and

(b) 0.5 per cent of any Turnover in excess of £1,000,000 (one million pounds).

24.2 The percentage of Turnover specified in paragraph 24.1.2(b) may be modified by the Commission with the consent of the Treasury, in order to reflect current regulatory costs, at any time after the end of the fifth year after the grant of this Licence.

24.3 For the purposes of this Condition "**Turnover**" means the total revenue generated by the provision of Electronic Communications Networks and Services under this Licence for the financial year ending immediately before the due date for payment of the fee.

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**25. NOTIFICATION OF CHANGES IN SHAREHOLDINGS**

- 25.1 The Communications Provider shall notify the Commission if an undertaking becomes a Holding Company in relation to the Communications Provider.
- 25.2 The Communications Provider shall notify the Commission of any acquisition of Shares or change in the Shareholding of a Relevant Company by any person only if, by reason of that acquisition or change, the total number of Shares in that Relevant Company held by that person (otherwise than as trustee or nominee for another person) together with any Shares held by any nominee or trustee for that person immediately after that change or acquisition:
- 25.2.1 exceeds 15 per cent of the total number of Shares in that company (where it did not exceed 15 per cent prior to that change or acquisition);
  - 25.2.2 exceeds 30 per cent of the total number of Shares in that company (where it did not exceed 30 per cent prior to that change or acquisition); or
  - 25.2.3 exceeds 50 per cent of the total number of Shares in that company (where it did not exceed 50 per cent prior to that change or acquisition).
- 25.3 Any notification under this Condition shall be given by a date which is 30 days prior to the taking effect of such change or acquisition as the case may be, or as soon as practicable after that date.
- 25.4 For the purposes of this Condition:
- 25.4.1 "**Holding Company**" has the same meaning as in section 1(4) of the Companies Act 1974.
  - 25.4.2 "**Relevant Company**" means the Communications Provider or a Holding Company in relation to the Communications Provider;
  - 25.4.3 "**Share**" has the same meaning as in section 341 of the Companies Act 1931, and the terms "Shares" and "Shareholding" shall be construed accordingly.
  - 25.4.4 "**Subsidiary Company**" has the same meaning as "subsidiary" in section 1 of the Companies Act 1974.

## **26. DISPUTES**

### **Referral of Disputes to the Commission**

26.1 The Communications Provider or any other Party may refer a Dispute to the Commission in such manner as the Commission may from time to time direct.

### **Resolution of Disputes by alternative means**

26.2 Where a Dispute is referred under paragraph 26.1 and the Commission consider that:

26.2.1 there are alternative means for resolving the Dispute; and

26.2.2 that a prompt and satisfactory resolution of the Dispute is likely if those alternative means are used for resolving it,

the Commission may decide that it is not appropriate for them to handle the Dispute.

26.3 As soon as reasonably practicable after the Commission have decided that it is not appropriate for them to handle a Dispute, they must notify the Parties of their decision and of their reasons for it.

26.4 The Dispute may be referred back to the Commission by one or more of the Parties where:

26.4.1 the Commission has notified the Parties in accordance with paragraph 26.3; and

26.4.2 the Dispute is not resolved by other means before the end of four months after the date of that notification.

### **Determination of Disputes**

26.5 Where a Dispute has been:

26.5.1 referred to the Commission under paragraph 26.1 and the Commission has not sent a notice in accordance with paragraph 26.3; or

26.5.2 the Dispute has been referred back to the Commission under paragraph 26.4,

the Commission shall:

26.5.3 consider the Dispute by means of such procedure as they consider appropriate;

26.5.4 make a Determination as soon as practicable and in any event within six months of the date of the referral under paragraph 26.1 or, if applicable, the date of the referral back under paragraph 26.4;

26.5.5 send a copy of the Determination, together with a full statement of their reasons for it, to every Party; and

26.5.6 publish so much of the Determination as they consider appropriate.

- 26.6 A Determination made by the Commission under this Condition shall be in such terms as the Commission consider appropriate in order to:
- 26.6.1 represent a fair balance between the legitimate interests of the Parties; and
  - 26.6.2 be proportionate and appropriate taking into account such of the following objectives as appear to the Commission to be appropriate:
    - (a) ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such Electronic Communications Services as satisfy all reasonable demands for them;
    - (b) ensuring that users derive maximum benefit in terms of choice, price and quality;
    - (c) ensuring efficient investment in infrastructure and promoting innovation; and
    - (d) encouraging the efficient use and effective management of radio frequencies and numbering resources.
- 26.7 The Communications Provider shall comply with any Determination made under Condition 26 of this Licence.

#### **Power of the Commission to require information in connection with a Dispute**

- 26.8 Where a Dispute has been referred or referred back to the Commission under this Condition, they may require the Communications Provider to provide them with all such information as they may require for the purpose of:
- 26.8.1 deciding whether it is appropriate for them to handle the dispute; or
  - 26.8.2 considering the dispute and making a Determination.
- 26.9 For the purposes of this Condition:
- 26.9.1 "**Determination**" means a direction made by the Commission to resolve a Dispute;
  - 26.9.2 "**Dispute**" means a dispute relating to the provision of Network Access which includes disputes as to the terms or conditions on which Network Access is or may be provided in a particular case;
  - 26.9.3 "**Parties**" means the parties to a Dispute and the term "**Party**" shall be construed accordingly.

**27. WIRELESS TELEGRAPHY**

Where the Communications Provider operates any Apparatus requiring a wireless telegraphy licence under the Wireless Telegraphy Acts 1949 and 1998 (of Parliament) (as these Acts have effect in the Island) as part of the Communications Provider's Network, such a wireless telegraphy licence must be in force in respect of each such piece of Apparatus.

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## **PART 4**

### **ADDITIONAL OBLIGATIONS ON OPERATORS WITH SIGNIFICANT MARKET POWER**

#### **28. PROCEDURE FOR MARKET POWER DETERMINATIONS**

##### **Determinations of Significant Market Power**

28.1 The Commission may, in accordance with the procedure set out in this Condition, determine the Communications Provider to have Significant Market Power in relation to a market identified in accordance with this Condition.

##### **Identification of markets**

28.2 Before making a market power determination under this Condition, the Commission shall identify (by reference to product or service type, as well as area and locality) the markets in relation to which it is appropriate to consider whether to make the determination taking into account the factors set out in Conditions 28.3 and 28.4.

28.3 In identifying the relevant markets, the Commission shall take account of:

28.3.1 generally accepted principles regarding the identification of markets as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island; and

28.3.2 the circumstances of the Island.

28.4 In determining whether the identified market is a market in relation to which it is appropriate to consider whether to make a determination, the Commission shall have regard to the following factors:

28.4.1 whether the market is subject to high and non-transitory entry barriers;

28.4.2 whether the market has characteristics such that it will tend over time towards effective competition; and

28.4.3 the sufficiency of measures under the Fair Trading Act 1996 or Condition 19 of this Licence (absent a determination under this Condition) to reduce or to remove such barriers or to restore effective competition.

##### **Identification of Significant Market Power**

28.5 In assessing whether the Communications Provider has Significant Market Power in any identified market for the purposes of this Condition, the Commission shall have regard to:

28.5.1 generally accepted principles regarding the identification of Significant Market Power as are applied from time to time in such other European jurisdictions as, in the opinion of the Commission, may be relevant to the circumstances of the Island; and

28.5.2 the circumstances of the Island.

- 28.6 In making a determination under Condition 28.6, the Commission may, in addition to any other factors which appear relevant to them, take into account all or any of the following factors:
- 28.6.1 the distribution of market shares and the stability of those market shares over time;
  - 28.6.2 the presence or absence of potential competition to the Communications Provider;
  - 28.6.3 the overall size of the Communications Providers' undertaking;
  - 28.6.4 the degree to which the Communications Provider controls any relevant infrastructure and the extent to which this can be duplicated by another provider of an Electronic Communications Network or Electronic Communications Service;
  - 28.6.5 the degree of vertical integration in the market;
  - 28.6.6 the extent to which the Communications Provider bundles its supply of the relevant product or service with other products or services;
  - 28.6.7 the presence or absence of countervailing buying power to the Communications Provider;
  - 28.6.8 the extent to which the Communications Provider possesses technological advantages or superiority over existing or potential competitors;
  - 28.6.9 the degree to which the Communications Provider can benefit from economies of scale and/or economies of scope;
  - 28.6.10 the extent of development of the Communications Provider's distribution and sales network;
  - 28.6.11 the degree to which the Communications Provider and any competitors can expand their business in the relevant market; and
  - 28.6.12 the ease with which the Communications Provider can access capital markets or other financial resources.

### **Procedure for issuing determinations**

- 28.7 Before the Commission:
- 28.7.1 identifies a market for the purposes of making a market power determination; or
  - 28.7.2 makes a market power determination,
- they must give a notification of what they are proposing to do.
- 28.8 Notifications for the purposes of paragraph 28.7 must:
- 28.8.1 state that the Commission are proposing to identify that market or to make that market power determination;

- 28.8.2 set out the effect of the proposal;
- 28.8.3 give their reasons for making the proposal; and
- 28.8.4 specify a period within which representations may be made to the Commission about their proposal.

28.9 That period must be a period of not less than one month after the day of the publication of the notification.

28.10 The publication of a notification under this section must be in such manner as appears to the Commission to be appropriate for bringing the contents of the notification to the attention of the persons who, in the Commission's opinion, are likely to be affected by the matters notified.

### **Review of determination**

28.11 The Commission may carry out further analyses of the identified market (in accordance with the procedure set out in this Condition) for one or both of the following purposes:

- 28.11.1 to review market power determinations made on the basis of an earlier analysis;
- 28.11.2 to decide whether to make proposals for the modification of conditions set by reference to a market power determination made on such a basis.

28.12 Before carrying out a further analysis under paragraph 28.11, the Commission may review any Commission decision identifying the markets which it was appropriate to consider for the purpose of carrying out an earlier analysis.

28.13 Where, on such a review, the Commission concludes that the appropriate markets have changed:

- 28.13.1 they must identify the markets they now consider to be the appropriate ones; and
- 28.13.2 those markets shall be the identified markets for the purposes of the further analysis.

### **Identification of appropriate remedies**

28.14 Where the Commission have determined that the Communications Provider has Significant Market Power in a market identified in accordance with this Condition, and are proposing to set a condition under Part 6 of this Licence, the Commission shall consider whether the imposition of any such condition is proportionate and objectively justified, taking into account such of the following objectives as appear to the Commission to be appropriate:

- 28.14.1 ensuring that there are provided throughout the Island, except where impracticable or not reasonably practicable, such Electronic Communications Services as satisfy all reasonable demands for them;
- 28.14.2 ensuring that users derive maximum benefit in terms of choice, price and quality;

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- 28.14.3 ensuring efficient investment in infrastructure and promoting innovation;
- 28.14.4 encouraging the efficient use and effective management of radio frequencies and numbering resources; and
- 28.14.5 ensuring efficient and sustainable competition.

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**29. NETWORK ACCESS**

- 29.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in an identified market in accordance with Condition 28, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 29.2, 29.3 and 29.4 in respect of a Relevant Network.
- 29.2 The Commission may specify one or more of the following conditions under paragraph 29.1:
- 29.2.1 conditions requiring the Communications Provider to give such entitlements as the Commission may from time to time direct as respects:
    - (a) the provision of Network Access to a Relevant Network; and
    - (b) the use of a Relevant Network.
  - 29.2.2 a condition requiring the Communications Provider not to discriminate unduly against particular persons, or against a particular description of persons or in relation to matters connected with Network Access to the Relevant Network;
  - 29.2.3 a condition requiring the Communications Provider to publish, in such manner as the Commission may from time to time direct, all such information as they may direct for the purpose of securing transparency in relation to such matters;
  - 29.2.4 a condition requiring the Communications Provider to publish, in such manner as the Commission may from time to time direct, the terms and conditions on which he is willing to enter into an Access Contract;
  - 29.2.5 a condition requiring the terms and conditions on which the Communications Provider is willing to enter into an Access Contract to include such terms and conditions as may be specified or described in the condition;
  - 29.2.6 a condition requiring the Communications Provider to make such modifications as the Commission may direct of any offer by that Communications Provider which sets out the terms and conditions on which he is willing to enter into an Access Contract; and
  - 29.2.7 conditions requiring the Communications Provider to maintain a separation for accounting purposes between such different matters relating to Network Access to the Relevant Network as the Commission may from time to time direct, as well as conditions imposing requirements about the accounting methods to be used in maintaining the separation.

- 29.3 The Commission may not set any condition in relation to a Relevant Network under paragraph 29.1 unless they consider this to be proportionate and appropriate, having taken into account, in particular, the following factors:
- 29.3.1 the technical and economic viability, having regard to the state of market development, of installing and using facilities that would make the proposed Network Access unnecessary;
  - 29.3.2 the feasibility of the provision of the proposed Network Access;
  - 29.3.3 the investment made by the person initially providing or making available the network or other facility in respect of which an entitlement to Network Access is proposed;
  - 29.3.4 the need to secure effective competition in the long term; and
  - 29.3.5 any rights to intellectual property that are relevant to the proposal.
- 29.4 The conditions specified by the Commission under paragraph 29.2 may include provision for:
- 29.4.1 securing fairness and reasonableness in the way in which requests for Network Access are made and responded to; and
  - 29.4.2 securing that the obligations contained in the conditions are complied with within the periods and at the times required by or under the conditions.
- 29.5 This Condition applies to the Communications Provider only to the extent that it provides a Public Electronic Communications Network.
- 29.6 For the purposes of this Condition:
- 29.6.1 "**Access Contract**" means a contract for the provision by the Communications Provider to another person of Network Access to the Relevant Network;
  - 29.6.2 "**Relevant Network**" means a Public Electronic Communications Network provided by the Communications Provider.

**30. NETWORK ACCESS PRICING**

- 30.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in an identified market in accordance with Condition 28, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 30.2 and 30.3 in respect of a Relevant Network.
- 30.2 The Commission may specify and impose on the Communications Provider one or more of the following conditions under paragraph 30.1:
- 30.2.1 conditions imposing such price controls as the Commission may direct in relation to matters connected with the provision of Network Access to a Relevant Network;
  - 30.2.2 conditions imposing such rules as the Commission may make, in relation to the matters referred to in paragraph 30.2.1, about the recovery of costs and cost orientation;
  - 30.2.3 conditions imposing such rules as the Commission may make, for the purposes of paragraph 30.2.2, about the use of cost accounting systems, provided that where the Commission imposes such rules they shall also require the Communications Provider to:
    - (a) make arrangements for a description to be made available to the public of the cost accounting system used in pursuance of that condition; and
    - (b) include in that description details of (i) the main categories under which costs are brought into account for the purposes of that system; and (ii) the rules applied for the purposes of that system with respect to the allocation of costs; and
  - 30.2.4 conditions obliging the Communications Provider to adjust prices in accordance with such directions given by the Commission as they may consider appropriate.
- 30.3 The Commission may not set any conditions under paragraph 30.1 in relation to a Relevant Network unless:
- 30.3.1 it appears to the Commission, from the market analysis carried out for the purpose of setting that condition, that there is a risk that the Communications Provider might sustain prices at an excessively high level or apply a price squeeze to the detriment of End Users; and
  - 30.3.2 it appears to the Commission that any such conditions are proportionate and appropriate for the purposes of: (i) promoting efficiency; (ii) promoting sustainable competition; and (iii) conferring the greatest possible benefits on the End-Users having taken account of the extent of the investment by the Communications Provider in the matters to which the condition relates.
- 30.4 This Condition applies to the Communications Provider only to the extent that it provides a Public Electronic Communications Network.

30.5 For the purposes of this Condition “**Relevant Network**” means a Public Electronic Communications Network provided by the Communications Provider.

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**31. CARRIER SELECTION AND PRE-SELECTION**

- 31.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in an identified market relating to services for the provision of Public Electronic Communications Networks for use by means of connections at fixed locations, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 31.2, 31.3 and 31.4 in respect of a Relevant Connection Facility.
- 31.2 The Commission may specify one or more of the following conditions under paragraph 31.1:
- 31.2.1 a condition requiring the Communications Provider to make a Relevant Connection Facility available to every person to whom the Communications Provider provides a Public Electronic Communications Service; and
  - 31.2.2 a condition requiring the Communications Provider, for the purpose of complying with the condition specified in paragraph 31.2.1, to make facilities for Interconnection available to a person providing an Electronic Communications Service.
- 31.3 Where the Commission specify a condition in accordance with paragraph 31.2.1, they may also specify such conditions as they consider appropriate:
- 31.3.1 with respect to the relationship to costs of any prices fixed for the use of the Relevant Connection Facility; and
  - 31.3.2 to secure that prices and other charges for Public Electronic Communications Services provided by the Communications Provider do not constitute a disincentive to the use of the Relevant Connection Facility.
- 31.4 For the purposes of this Condition:
- 31.4.1 **"Relevant Connection Facility"** is a facility which:
    - (a) allows a person to whom a Public Electronic Communications Service is provided by means of an Electronic Communications Network to select which Public Electronic Communications Service provided wholly or partly by means of that Network is the Service that he wishes to use; and
    - (b) enables that selection to be made either: (i) by the use of a Telephone Number on each separate occasion on which a selection is made; or (ii) by designating in advance the selection that is to apply on every occasion when no such selection as is mentioned in (i) is made.

## **32. REGULATION OF SERVICES FOR END USERS**

- 32.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in an market for a Relevant Retail Service identified in accordance with Condition 28, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 32.2 and 32.3 in respect of a Relevant Retail Service.
- 32.2 The Commission may not specify any condition under paragraph 32.2 unless:
- 32.2.1 they are unable, by the setting of conditions under Conditions 29, 30 or 31, to perform, or fully to perform, their Relevant Duties; or
  - 32.2.2 such a condition is proportionate and appropriate in order to perform, or fully to perform, their Relevant Duties.
- 32.3 The Commission may specify such conditions as they consider appropriate under paragraph 32.1, provided that where the Commission set a condition which imposes regulatory control on tariffs or other matters to which costs are relevant, they shall also set and apply to the Communications Provider a condition which requires it, to the extent that the Commission considers appropriate:
- 32.3.1 to use such cost accounting systems as may be determined by them;
  - 32.3.2 to have the use of those systems audited annually by a Qualified Auditor; and
  - 32.3.3 to publish an annual statement about compliance by the Communications Provider with the obligations imposed by virtue of paragraph 32.3.1.
- 32.4 For the purposes of this Condition:
- 32.4.1 "**Qualified Auditor**" means a person eligible, in accordance with Part 1 of the Companies Act 1982, for appointment as a company auditor;
  - 32.4.2 "**Relevant Retail Service**" means an Electronic Communications Service which is provided by the Communications Provider to End-Users;
  - 32.4.3 "**Relevant Duties**" means the statutory duties of the Commission as set out in the Act.

### 33. LEASED LINES

- 33.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in a market relating to the provision of Relevant Leased Lines identified in accordance with Condition 28, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 33.2 and 33.3 in respect of Relevant Leased Lines.
- 33.2 The Commission may specify one or more of the following conditions under paragraph 33.1:
- 33.2.1 conditions requiring the Communications Provider to adhere to the principle of non-discrimination when providing Relevant Leased Lines;
  - 33.2.2 conditions requiring the Communications Provider to ensure that tariffs for Relevant Leased lines follow the basic principles of cost orientation;
  - 33.2.3 conditions imposing such rules as Commission may make, for the purpose of securing the cost orientation of tariffs, about the use of cost accounting systems; and
  - 33.2.4 conditions requiring the Communications Provider to publish such information as the Commission may specify regarding technical characteristics, tariffs and supply conditions with respect to Relevant Leased Lines.
- 33.3 The Commission may not specify a condition under paragraph 33.1 unless they consider that such a condition is proportionate and appropriate.
- 33.4 For the purposes of this Condition:
- 33.4.1 "**Leased Line**" means an Electronic Communications Service the provision of which consists in the reservation of a fixed amount of transmission capacity between fixed points on the same or different Electronic Communications Networks; and
  - 33.4.2 "**Relevant Leased Line**" means any Leased Line as is for the time being identified by the European Commission in the list of standards published in the Official Journal of the European Communities.

**34. APPARATUS SUPPLY**

- 34.1 Where the Commission have made a determination that the Communications Provider has Significant Market Power in a market for Electronic Communications Apparatus identified in accordance with Condition 28, the Communications Provider shall comply with such conditions as the Commission may from time to time specify by direction in accordance with Condition 28 and paragraphs 34.2 and 34.3 in respect of the supply of Electronic Communications Apparatus.
- 34.2 The Commission may specify one or more of the following conditions under paragraph 34.1:
- 34.2.1 conditions requiring the Communications Provider to maintain such a separation for accounting purposes between matters relating to the supply of Electronic Communications Apparatus and other matters as may be described in the conditions;
  - 34.2.2 conditions imposing requirements about the accounting methods to be used in maintaining the separation;
  - 34.2.3 conditions imposing such rules as Commission may make, for the purpose of securing the maintenance of the separation, about the use of cost accounting systems; and
  - 34.2.4 conditions imposing price controls in relation to the hiring of Hardwired Telephones.
- 34.3 The Commission may not set any condition under paragraph 34.1 in relation to the supply of Electronic Communications Apparatus unless:
- 34.3.1 the Apparatus is of a description of Apparatus as respects the supply of which the Communications Provider has been found to have Significant Market Power; and
  - 34.3.2 the Commission considers that such a condition is proportionate and appropriate.
- 34.4 For the purposes of this Condition "**Hardwired Telephone**" means a telephone which is hardwired to an Electronic Communications Network where, in order for it to be used with that Network:
- 34.4.1 it has to be physically attached to Apparatus comprised in the Network; and
  - 34.4.2 the attachment has to be effected by a process that requires the use of a tool.

## **SCHEDULE 2: REVOCATION**

1. Notwithstanding paragraph 2 of the Licence the Commission may at any time revoke this Licence by 30 days' notice in writing given to the Communications Provider at its registered office in any of the following circumstances:
  - (a) if the Communications Provider agrees in writing with the Commission that this Licence should be revoked;
  - (b) if any amount payable under Condition 24 of this Licence is unpaid after it becomes due and remains unpaid for a period of 14 days after the Commission notifies the Communications Provider that the payment is overdue, such notification not to be given earlier than the sixteenth day after the day on which the payment becomes due;
  - (c) if the Communications Provider fails to comply with an order made by the Commission under section 11 of the Act and that order is not subject to proceedings for review and such failure is not rectified within 30 days, or such longer period as the Commission may determine, after the Commission has given notice in writing of such failure to the Communications Provider;
  - (d) if the Communications Provider;
    - (i) is deemed unable to pay its debts (within the meaning of section 163 of the Companies Act 1931 as applied for the purposes of this Licence by paragraph 2 below), convenes any meeting with its creditors generally with a view to the general readjustment or re-scheduling of its indebtedness or makes general assignment for the benefit of its creditors generally; or
    - (ii) enters into receivership or liquidation; or
    - (iii) ceases to carry on its business;
  - (e) if the Communications Provider or any other person takes any action for voluntary winding-up or dissolution of the Communications Provider;
  - (f) if the Communications Provider enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission);
  - (g) if a receiver, trustee or similar officer of the Communications Provider, or of all or any material part of the revenues and assets of it, is appointed; or
  - (h) if any order is made for the compulsory winding-up or dissolution of the Communications Provider.
2. For the purpose of paragraph 1(d)(i) of this Schedule, in applying section 163(1) of the Companies Act 1931 the figure of "£50" or such other money sum as may be specified from

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time to time, shall be deemed to be replaced by £250,000 or such higher figure as the Commission may determine. Section 163(1) shall not apply if the written demand served on the Communications Provider is being contested in good faith by the Communications Provider with recourse to all appropriate measures and procedures, whether legal or otherwise, or is satisfied prior to expiry of the notice of revocation from the Commission.

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**SCHEDULE 3: COMMUNICATIONS PROVIDER'S NETWORK**

1. The Communications Provider's Network may be comprised of telecommunications systems of every description within the Island.

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## **SCHEDULE 4: SERVICE AND CONNECTION AUTHORISATION**

1. Nothing in this Licence removes any need to obtain any other licence that may be required under any other statutory provision.

### **Connection Authorisation**

2. Subject to paragraph 1, this Licence authorises the connection to the Communications Provider's Network of:
  - (a) any telecommunication system run under a licence granted under section 5 of the Act;
  - (b) any telecommunication system outside the Island;
  - (c) any earth orbiting apparatus;
  - (d) any telecommunication system run by the Crown;
  - (e) any telecommunication system situated in an aircraft, seagoing vessel, hovercraft or offshore installation;
  - (f) telecommunication apparatus of every description which is comprised in a telecommunication system mentioned in sub-paragraphs (a) to (e) above;
  - (g) any telecommunication apparatus not comprised in a telecommunication system which is for the time being approved for connection to the Communications Provider's Network under section 16 of the Act or by virtue of an order made under section 21 of the Act or which meets the appropriate Essential Requirements; and
  - (h) any hearing aid.

### **Service Authorisation**

3. Subject to paragraph 1, this Licence authorises the provision by means of the Communications Provider's Network of any telecommunication services.
4. In this Schedule:
  - (a) "**Essential Requirements**" has the same meaning as in Schedule 1 of this Licence;
  - (b) "**seagoing vessel**" includes any floating structure for the exploration for, or exploitation of, oil or gas, or similar structure, while it is not maintained on a station.
5. Any word or expression used in this Schedule shall unless the context otherwise requires have the same meaning as it has in the Act.



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