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PREM 19/1344

PART 7

CONFIDENTIAL FILING

Future of the Post Office &
British Telecom

POST & TELECOMMUNICATIONS

PART 1 MAY 1997

PART 7 APRIL 8

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
20.4.83		24.10.83					
3.5.83		27.10.83					
6.5.83		28.10.83					
16.5.83		31.10.83					
19.6.83		7.11.83					
23.6.83		9.11.83					
27.6.83		14.11.83					
1.7.83		17.11.83					
29.7.83		21.11.83					
4.8.83		25.11.83					
12.8.83		6.12.83					
13.9.83		8.12.83					
1.10.83		13.12.83					
10.10.83		21.12.83					
6.10.83		28.12.83					
2.10.83		11.1.84					
17.10.83		PTT ENDS					

● PART 7 ends:-

S/S ENV. — K. BAKER

11-1-84

PART 8 begins:-

M/S DTI to SS 12-1-84



NSM BT u/l

2 MARSHAM STREET
LONDON SW1P 3EB

01-212 3434

My ref: PSO/18009/83

Your ref:

1/ January 1984

Dear Ken,

-undated

Thank you for your letter of 19 December 1983 about the proposal by Mercury Communications to instal microwave transmitter apparatus in Manchester; and the City Council's refusal to grant planning permission.

Mercury Communications have not yet submitted an appeal. They have 6 months from the receipt of the notice of refusal. The earlier they appeal, the earlier they are likely to receive a final decision. The time-scale for this will inevitably depend on the complexity of the particular case and on the procedure adopted - in particular whether, as in the great majority of cases, the appeal is decided by one of my Planning Inspectors.

You will appreciate that I cannot comment on the merits of a proposal which may well come before me on appeal; I can assure you however that a decision, based on a full and fair assessment of all the planning issues, would be issued as quickly as possible, and I have asked my officials to guarantee that there will be no avoidable delays and that we do all we can to handle the appeal speedily.

I will see that you are notified if an appeal is received, and of the eventual outcome.

I am copying this letter to the Prime Minister.

Yours
Pat

PATRICK JENKIN

Post + Ter
Kutune
R7



11 JAN 1984

CONFIDENTIAL



REV

10 DOWNING STREET

From the Private Secretary

28 December 1983

Post Office Industrial Action

The Prime Minister was grateful for your Secretary of State's minute of 22 December, setting out the latest position on the UCW dispute in the W12 area.

The Prime Minister has commented that she hopes that arbitration on the industrial action clause will not result in a weaker bonus system. She considers that the leverage in the present system is highly desirable, and has proved a powerful deterrent to strike action.

I am sending a copy of this letter to Barnaby Shaw (Department of Employment).

MR. D. BARCLAY

Callum McCarthy, Esq.,
Department of Trade and Industry.

MR.

CONFIDENTIAL

CONFIDENTIAL

Prime Minister ✓



DEPARTMENT OF TRADE AND INDUSTRY
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From the Minister of State
for Industry and Information Technology

KENNETH BAKER MP

Rt Hon Patrick Jenkin MP
Secretary of State for the
Environment
2 Marsham Street
LONDON SW1

PA
DUB
30/12

Prime Minister

To be aware

DUB
29/12

MERCURY COMMUNICATIONS

I am sure that you were as disturbed as I was to hear of the refusal by Manchester City Council to grant planning permission to Mercury to instal its microwave transmission apparatus in Manchester. This will inevitably delay the extension of Mercury's service to the Manchester area, and deprive Manchester businesses of the possibility of using Mercury's competing telecommunications network.

While Manchester City Council are claiming that the decision stems from the possible health risks involved, their statements elsewhere seem to suggest that this has little to do with planning procedures but is instead a politically motivated step. I attach an article from this week's Sunday Times which would tend to confirm this view.

I understand that Mercury will be shortly lodging an appeal with you against the Manchester City Council decision. I know that you will be acting in a quasi-judicial role when considering this case, and that you will have to make your judgement on the basis of the planning issues involved.

I would therefore obviously not wish to interfere in any way in this process, but the gaining of the necessary consent is central to Mercury's expansion programme, and I would ask that their appeal is looked at with all possible urgency, in particular as it seems that other councils might well be considering similar action.

I am copying this to the Prime Minister.

KENNETH BAKER

M24/M24AAG

Sunday Times
18/12/83

4

★ ★ ★

Councils back phone union over Mercury transmitters

by Julian Desser

THE Post Office Engineering Union has found a new weapon in its campaign against British Telecom's commercial rival, Mercury Communications. The union has enlisted the support of Labour councils to block the installation of transmitters vital to Mercury's success.

Mercury is already troubled by a lack of customers and is behind schedule in its attempts to build a nationwide network of microwave transmitters to carry telecommunications traffic. It now faces the prospect of further delays while it appeals against council decisions to refuse planning consent for them.

Last week, the Labour-controlled Manchester city council refused Mercury leave to build a 4ft-diameter rooftop microwave dish; Nottingham agreed to defer its decision and other councils are expected to follow suit.

So far only London and Birmingham have given Mercury the necessary planning consent. The company is waiting for decisions from Coventry, Leeds, Sheffield and Bristol - all Labour-controlled except Bristol, which is a hung council with the balance of power being held by the Liberals.

The reason given for Manchester council's decision was a possible health risk from microwave radiation - in spite of contrary advice from the city's own planning officer.

The council's deputy chairman, Kevin Lim, confirmed

that the refusal was in support of the union's battle with Mercury. "I was directly approached by representatives from the Manchester central branch of the union," says Lim. "They were able to supply considerable evidence and statistics to prove there is a real, potential danger to health in a crowded city.

"At the same time my Labour colleagues and I are sympathetic to the union's fight against privatisation and the establishment of a rival telephone system."

The Medical Research Council, however, says the evidence of health risks from the microwave transmitters is thin. The maximum safe level of constant daily exposure to the microwaves is 10 milliwatts per square centimetre, but Mercury's equipment will produce only 1.12 milliwatts.

Nevertheless, the union is to step up its lobbying of councils where Mercury is seeking consent.

Sandy Skinner, Mercury's communications manager, says the union's claims of health risks are nonsense. "British Telecom itself is the biggest user of microwave technology."

Mercury is alarmed by this latest tactic. It suffered damaging delays when the union refused to connect its communications system to the national network. The company eventually defeated the union in the Court of Appeal.

Further council decisions to refuse planning permission could result in more delays - of up to a year - before Department of Environment appeal inquiries can be held.

9 DEC 1983





PRIME MINISTER

So do I. It
has been a
powerful
deterrent to strike
action
not.

Prime Minister (2)

I hope arbitration does not
impose a weaker bonus system. The
leverage in the present system is
highly desirable.

AT 28/12

POST OFFICE INDUSTRIAL ACTION

This minute sets out the latest position on a dispute with the Union of Communications Workers (UCW) in the Shepherds Bush (W12 area).

The dispute at Shepherds Bush is over a decision by the Post Office to apply its national decision to cut costs through the elimination of night working. This led to disruptive action by the workers which became an official strike on 21 December. In view of the unofficial action, involving 61 men, the letter boxes in the W12 district have been sealed since 24 November.

The essential point at issue, however, is a campaign by the UCW to remove from the Post Office's National Productivity Agreement a condition which cancels any bonuses should there be industrial action by the workers in question. For example, if a worker strikes for even half a day, he loses that whole week's bonus. This has weakened the ability of the UCW to call out their members; the TUC day of action was, for example, not widely supported by postmen but half the workforce are covered



by productivity agreements which are locally negotiated within a national framework.

The Post Office Board met the UCW yesterday afternoon and agreed that this overall issue of the industrial action clause should be referred to ACAS for binding arbitration. They have, however, already agreed on consultation in individual cases on what constitutes a dispute and when bonus payments should be lost.

Negotiations took place last night and today on a return to work at Shepherds Bush. I have heard this evening from Mr Dearing that these were successful.

The Post Office were fearful before the discussions they had yesterday that breakdown of negotiations could lead to a London-wide or even national postal strike. This seems unlikely, in view of the positive outcome of negotiations.

I am copying this to Tom King.

A handwritten signature in dark ink, appearing to be 'NT'.

N T

22 December 1983

Department of Trade & Industry



10 DOWNING STREET

cc Mr Alison
Mr Owen

file

From the Private Secretary

21 December 1983

Liberalisation in Telecommunications

Lord Orr-Ewing accompanied by Lord Mottistone and Bowen Wells, M.P., called on the Prime Minister yesterday to discuss the impact of liberalisation in telecommunications on the smaller radio telephone companies. Mr. Baker and Mr. Alison were also present.

Lord Orr-Ewing said he reluctantly accepted the decision to establish two duopolies, one for telephone networks and one for radio services. His first concern was that the Government was not providing sufficient frequencies for the smaller radio telephone and message handling companies and were outside the duopoly. These companies numbered about 47, employed over 4,000 people and had over 20,000 clients. He was sure that if sufficient effort were made, the Government could find additional frequencies.

Secondly he urged that Oftel's remit should include a requirement to take account of the interests of smaller firms. Thirdly, he urged that Oftel should be staffed as much as possible from the private sector and not with former employees of BT. Fourthly, he urged progressive decoupling of BT from DTI so that the latter was no longer dependent on BT for advice. Finally, he expressed concern about the excessive use by BT of its near monopoly power.

The Prime Minister said it was important that the smaller partners in the duopoly should be allowed to develop to the point where they provided effective competition for BT. To do this, they had to invest very large sums of money and it was therefore appropriate that their position should be protected for a given period of time.

/On radio

On radio frequencies she said Mr. Baker would shortly be announcing the availability of a further 19 channels, 9 in London and 10 from the Maritime Band. There would be a competition for these frequencies and Air Call would be invited to enter. Mr. Baker said that he would look further into Oftel's remit to see what provisions could be made for smaller companies. He very much agreed with the need to staff Oftel independently and the process of decoupling BT from DTI had already begun. For example BT no longer represented DTI at international meetings on satellites and frequency allocations. He also took note of Lord Orr-Ewing's comments on BT's use of its monopoly power.

I attach copies of the notes which Lord Orr-Ewing left with the Prime Minister.

MR. A. TURNBULL

Neil McMillan Esq
Department of Trade and Industry.



10 DOWNING STREET

Prime Minister

A full brief, but a
summary is on page 9.

Mr Baker would like 5
mins when you brief

Lord Orr Ewing comes in
to explain the background

AT

19/12



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*From the Minister of State
for Industry and Information Technology*

KENNETH BAKER'S OFFICE

Andrew Turnbull Esq
10 Downing Street

December 1983

PRIME MINISTER'S MEETING WITH LORD ORR-EWING

I attach a full brief for the Prime Minister for the meeting with Lord Orr-Ewing on 20 December at 4.30.

The essential problem which Lord Orr-Ewing is likely to raise is what he and the company with which he is associated, AirCall, see as undue discrimination against AirCall both in licensing of services and allocation of radio spectrum.

Ministers in this Department have seen Lord Orr-Ewing and AirCall on a number of occasions to hear their concerns, and have done all they can to help. In the end, however, AirCall are looking for the ability to provide a third national radiotelephone network. This inevitably brings them into collision with policy decisions made by Ministers last year that there would be no more than two competing networks, both using the new cellular radio technology.

Mr Baker will be attending the meeting with Lord Orr-Ewing.

N M McMILLAN
PRIVATE SECRETARY

M24/M24AAH



PRIME MINISTER'S MEETING WITH LORD ORR-EWING

COMPETITION IN TELECOMMUNICATIONS

Introduction

1 Lord Orr-Ewing has had a distinguished career as an electronics engineer - he designed one of the early television receivers - and is held in high regard in the electronics and telecommunication industries. A curriculum vitae is attached.

2 Lord Orr-Ewing's interest in competition in telecommunications arises because he acted as Chairman of one of the five private sector companies which entered the 1982 competition for the private sector's half of the frequencies available for cellular radio. His consortium was organised by Air Call plc, the private radio telecoms company, included Cable and Wireless and used technical advice from AT and T, who have pioneered cellular radio in America. Despite these advantages, the Air Call consortium lacked management and financial resources and did not have coherent plans to expand outside London. It therefore came third in the competition. The winner by a clear margin was Racal-Millicom Ltd, which put forward proposals for a genuinely nationwide network involving substantially greater investment than Air Call or the runner up, Ferranti, envisaged. The evidence is that Racal will provide significant competition for BT when their service opens in



1985. Racal also plan eventually to manufacture mobile and hand portable apparatus in this country with benefits for employment and the balance of payments. The second national cellular network will be run by BT in partnership with the private sector firm Securicor, which is at present the largest radio telephone network provider.

3 Air Call have never accepted the results of the competition, although it was conducted by independent consultants whose conclusions were checked by an independent panel, all of whom advised that Racal were the clear winner. Since the result of the competition was announced Air Call have persistently lobbied the Radio Regulatory Department and Ministers in both the Home Office and the DTI to obtain radio frequencies to run a radio telephone operation in competition with BT's existing VHF service and with the cellular radio networks when the latter come into operation in 1985. Air Call claim that radio frequencies are deliberately being left fallow and that officials in the DTI are conspiring to drive small businesses out of the telecommunications market. Lord Orr-Ewing has accepted Air Call's arguments and has become an active lobbyist on their behalf. Of more particular concern, he appears to have interpreted remarks made by Mr Baker when informing him of the result of the cellular competition as meaning that, although Air Call had come third in the competition, they would nevertheless be allocated almost the same radio frequencies as if they had won.

Brief

4 In his letter of 5 December Lord Orr Ewing characterised telecommunications policy as being more



restricted than originally envisaged since for a number of years there will be 2 large duopolies:

- (i) telephone networks: BT and Mercury
- (ii) radio services: BT/Securicor and Racal.

Telephone Networks

5 The Government is committed to the policy, first stated publicly when the Mercury Licence was issued in February 1982, that only BT and Mercury will be licensed to run national and international telecommunications systems involving fixed links. This policy was reaffirmed on 17 November when Mr Baker announced that the policy will not be reviewed until November 1990.

6 The Prime Minister [redacted] took the decision that there should be only two national fixed link networks for the next seven years. The published reasons for the duopoly are:

- (a) telecoms networks everywhere except in America are a single monopoly and, since the licensing of a competitor is a revolutionary step whose implications are unknown, the Government has decided to proceed by licensing only a single second national network;
- (b) the BT monopoly is believed to permit the cross-subsidisation of social services like public call boxes, 999 services and services in



remote rural areas out of profits on international, trunk and business services, so unrestricted competition which would focus on business customers could cut off the source of the subsidies;

- (c) the BT system cost £ billions to install and was designed as a monopoly. The network cannot be reengineered overnight to meet proliferating competition;
- (d) a competitive free-for-all in a market with an established monopolist like BT will almost certainly result in a series of undercapitalised minnows and no real impact on BT's monopoly (as may be happening with the National Bus company);
- (e) effective competition requires BT's competitor to spend hundreds of millions of pounds over a long period of years without any return and to do so in face of opposition from an established monopolist. The City will not put up the funds unless there is stability over the period of negative cash flow;
- (f) environmentally there are strong objections to proliferating overhead wires and extra street works which are necessary to install competing networks;
- (g) nature has not provided sufficient radio frequencies to support a large number of



competing carriers and even the licensing of Mercury has created serious frequency allocation problems.

7 These considerations make it necessary to regulate competition in telecommunications. The Government considers that the best way of giving customers an effective choice is to license only one major competitor for BT which has the financial, management and technical resources to challenge BT in the market place. The position will be reviewed in 1990 when Mercury is properly established and BT has adjusted to competition.

8 The Government is, however, licensing competition for BT in three specialist markets:

- (a) there is the most liberal regime for Value Added Network Services in the world and small firms are in an excellent position to compete with BT. (Air Call have argued that licensing is unnecessary and that the Government's policy conflicts with a recent European Commission decision. Their arguments ignore the need for licensing to secure the provision of public call boxes, to protect the national network from damage etc and their interpretation of the EC Decision is wrong.)



- (b) the two cellular radio networks will each be capable of serving several hundred thousand customers who will thus have an alternative choice to BT; and
- (c) local broadband cable systems will provide competition for BT and Mercury at the local level.

Radio Networks

9 Lord Orr-Ewing claims that the Government and civil servants have deliberately limited and suppressed all the companies, mainly small, which for many years have been providing radio services. He says that a multiplicity of service companies are needed and that the Government has deliberately withheld radio channels from small companies. Lord Orr-Ewing claims specifically that Mr Baker promised that extra channels would be made available to permit the private sector mobile telephone companies to compete.

10 Essentially Lord Orr-Ewing wants extra frequencies to be given to Air Call; it has only 17 channels whereas the existing BT VHF non-cellular mobile telephone service has 110 channels. It is not possible to grant Air Call the frequencies they would like because the spectrum simply is not available and, if it were, it could not be given to Air Call without considering the other claims for it eg those from Ferranti. Also Racal is investing many millions of pounds in its network on the basis of assurances about the allocation of radio frequencies. The Government has made



major strides towards liberalising radio telephones by allocating frequencies for the two cellular radio networks. This represents a huge expansion in the number of channels available but it was decided after long and careful thought that considerations of spectrum efficiency and the nature of cellular radio operations made it necessary to divide the frequencies between only two national operators. If the frequencies had been divided three or four ways, there would have been significant reductions in the number of customers that the frequencies could support. The decision to licence only two operators was widely publicised and Air Call participated in the cellular competition on that basis. It is inconceivable that, if Air Call had won, they would have wanted a third national network to be licensed as they now propose. In practice, having lost the competition, they want a replay with different rules.

11 The Department has, however, paid serious attention to Air Call's claims that radio frequencies are being left fallow. A special review Committee was appointed under the chairmanship of Professor Merriman, which reported that no significant frequencies were unused. Merriman pointed out that the only potential source of significant amounts of spectrum was in the bands now used by 405 line television. The Government has accepted that 405 line television transmission should cease on 1 January 1985 and the frequencies reallocated. A consultative paper will be published early in 1984 which will outline how the frequencies might be reallocated. Following this consultative exercise, the number of frequencies available for land mobile radio will roughly double and this will permit many new services to be introduced with access to



large numbers of channels and free of current restrictions. Some of the extra channels might be allocated to firms like Air Call but the process of allocation will need to be fair and take account of demands by other operators who have claims as good as Air Call's.

12 The 405 line TV frequencies will not be available until the beginning of 1985. In the interim the Department has been attempting to secure additional channels for companies like Air Call. Air Call was one of three companies each of which was assigned a national radio paging channel early this year. Also 52UHF channels were released for use in London only. A further 10 channels in the Private Maritime Band are to be released on 1 January 1984, which will be available throughout the UK. In London an additional 9 channels will be available immediately and the Department is considering how to release further channels from the Private Maritime band. This more than fulfils the pledge Mr Baker made to Lord Orr-Ewing. No undertaking was given that Air Call would be given 150 additional frequencies.

13 The Department has taken special steps to safeguard the interests of small operators like Air Call when the new cellular networks come into operation. We were worried that when the two cellular networks come into operation they could become monopolies which would not allow small firms to provide services in competition. We have therefore required Racal and BT/Securicor to set up separate companies to run their networks. The operating companies will be required to allow other operators like Air Call to provide services over their two cellular networks and to sell radio telephones in



competition with the Racal and BT/Securicor subsidiaries. These arrangements, which will be backed up by the new enforcement powers of the Director General of Telecommunications and OFTEL, will ensure that small firms can provide innovative services and apparatus without bearing the expense of setting up the cellular networks themselves.

Summary

14 The Government has:

- decided after careful study to set up only two fixed link national telecommunication networks;
- concluded that the best course is to license only two national cellular radio systems;
- allocated additional frequencies to Air Call and its competitors in the year since the result of the cellular competition was announced;
- taken steps through the Merrimon review and the termination of 405 line television to find extra frequencies for private mobile radio;
- imposed rules on the cellular operators to give a fair chance to small service-providing firms.

ORR-EWING, family name of Baron Orr-Ewing.

ORR-EWING, Baron *cr* 1971 (Life Peer), of Little Berkhamsted; (Charles) Ian Orr-Ewing, OBE 1945; 1st Bt *cr* 1963; Consultant and Director various companies; Chairman, Metrication Board, 1972-77 (Deputy Chairman, 1971-72); *b* 10 Feb. 1912; *s* of Archibald Ian Orr Ewing and Gertrude (*née* Runge); *m* 1939, Joan McMinnies; four *s*. *Educ.* Harrow; Trinity Coll., Oxford. MA (Physics). Graduate apprentice, EMI, Hayes, 1934-37; BBC Television Service, 1938-39, 1946-49. Served RAFVR, 1939-46, N Africa, Italy, France and Germany. Wing Comdr, 1941; Chief Radar Officer, Air Staff, SHAEF, 1945 (despatches twice); BBC Television Outside Broadcasts Manager, 1946-48. Adopted prospective Conservative Candidate N Hendon, 1946; MP (C) North Hendon, 1950-70; Joint Secretary, Parliamentary Scientific Cttee, 1950; Vice-Chm., Civil Air Cttee, 1955-57; Vice-Pres., Parliamentary and Scientific Cttee, 1965-68; Vice-Chm., 1922 Cttee, 1966-70 (Secretary, 1957); Vice-Chairman, Defence Cttee, 1966-70. Parliamentary Private Secretary to Sir Walter Monckton, Minister of Labour and National Service, Nov. 1951-May 1955. Parliamentary Under-Secretary of State, for Air, Air Ministry, 1957-59; Parliamentary and Financial Secretary to Admiralty, 1959; Civil Lord of the Admiralty, 1959-63. Mem., Royal Commn on Standards of Conduct in Public Life, 1975-76. Pres. and Chm. of Council, Electronic Engineering Assoc., 1969-70. Pres., Nat. Ski Fedn of GB, 1972-76. F.I.E.E. *Recreations*: tennis, light-hearted cricket and ski-ing. *Heir* (to baronetcy only): *s* (Alistair) Simon Orr-Ewing [*b* 10 June 1940; *m* 1968, Victoria, *er d* of Keith Cameron, Fifield House, Milton-under-Wychwood, Oxon; two *s* one *d*]. *Address*: The Old Manor, Little Berkhamsted, near Hertford, Herts. *Clubs*: Boodle's, MCC; Vincents' (Oxford).

NOTES FOR DISCUSSION WITH PRIME MINISTER

1. Grateful to you for seeing us.
BT Bill comes to the House of Lords immediately after the recess. We hope the Government will initiate some changes and give some assurances.
2. The effect of setting up a duopoly with BT having 97% and Mercury 3%, and a second duopoly of BT/Securicor (BT in control) and Racal, is highly restrictive, particularly since the statement that this will last until 1990.
3. A consortium of 5 companies, led by a U.K. merchant bank, wanted to spend up to £500 million to start a rival radio ~~networking~~ using the latest technology. They have been choked off and are going elsewhere (probably U.S.A.).
4. We cannot believe that it was the Government's intention to hobble and neglect the 47 radio telephone and message handling companies, which have provided services for 25 years. Air Call, now the biggest and started in 1958, was the first pioneer. These 47 companies employ over 4,000 people. Three of the companies have national coverage. They cover 20,000 clients and this number is growing by 30% per annum. BT by comparison has 8,000 clients, and Racal nil.
5. Despite privatisation plans and policy, these 47 companies and about 1,000 service companies are ^{still} all licensed by BT, which is their main competitor and exercises predatory practices. They all operate on VHF frequencies. BT has 112 channels and Air Call, the largest, has only 17. It is not right to say that no frequencies are available. VHF frequencies are available now, and there are chunks of the spectrum which will become available 1st January 1985 (when Bands 1 and 3 are cleared), which should be allocated now to companies ~~supplying~~, since they have to plan, select sites and go out to tender for equipment.

Though the future may rest with cellular systems (900 MHz) and digitalisation, it was never Government plans to deny these 47 companies their right to exist and serve the public in all parts of the U.K.

6. If it is argued that yet another Committee should be set up to consider frequencies, these are the same arguments which prevented the expansion of ITV and independent local radio. The World Administrative Radio Conference sat from 1976 to 1979 and reserved ~~bands~~ ^{bands} for mobile radio; a Home Office committee sat in 1982 and Merriman in 1983. These were followed by the Beasley Committee. Another committee would be a further way of wasting time and starving the pioneers.
7. A 1,000 or so service companies (sometimes called Value Added Service Companies) undertake telephone answering, message handling, secretarial and finding services, telex bureaux (Poste Restante), telex forwarding and handling services, and data transmission services. For some strange reason the DTI have shut their eyes to the existence of all these services.

BT have declared that certain of these activities infringe their exclusive privilege and monopoly.

It is obviously ridiculous that these services should be licensed by their main competitor. This must be done by DTI.

8. Beasley, Littlechild and the EEC all stated that resale should be permitted. Beasley's first recommendation said:

"...that in the home market there should be no restriction on the freedom to offer services to third parties over BT's network"

The EEC Commission (21/12/1982) said (para. 44):

"For the reasons set out above the restrictions on the use of telex and telephone facilities and services by BT constitute infringements of Article 86 of the EEC Treaty. BT should therefore be required to terminate any of the restrictions that are still in operation."

It seems pointless for the Government to set up commissions and then reject their findings.

9. There are many examples of predatory practices where BT charge twice as much for installing their own analogue equipment as they do for installing competitive equipment. I have evidence their maintenance charges are £270 a quarter on the typical BT installation and £540 for a private installation of the same size. There are many further and more glaring examples, and we feel that neither Oftel, the Office of Fair Trading or the Monopolies Commission will be able to act with sufficient speed and vigour to prevent these malpractices.

LIBERALISATION OF TELECOMMUNICATIONS

As the principal representative body of business users of telecommunications, the Telecommunications Managers Association (TMA), has supported the processes which were intended to bring about liberalisation of telecommunications in the UK. Although TMA advocated a very different route to liberalisation, it has in fairness been difficult for it to challenge the route chosen by Government until the finer details had been published and the effects observed. It is now clear that the Government's stated intentions are being frustrated. Remedial action is urgent if the promised benefits of liberalisation, competition and user choice are to be salvaged.

Developments over the last few months, including the Minister's statement on 17th November, 1983, have shown that progress towards liberalisation has been thwarted. TMA thinks this is because BT has accepted the challenge to become entrepreneurial; it has used its right to be consulted under the 1981 Telecom Act, its long standing advisory relationship with DTI officials and its superior technical resources in order to dominate the thinking in the Department. This thinking now appears to focus more on the protection of the revenues BT will get from its near monopoly of the market than on promoting the interests of the infant competition. It is probable that the UK competition will be stifled before the new Act can be effective.

TMA is convinced that the Office of Telecommunications (OFTEL), as proposed, will be unable to avoid being similarly dominated by BT.

The business users want to highlight the threat of failure of the Government's liberalisation programme and to indicate how the continuance of the monopoly, even under the guise of a p.l.c, can still be avoided.

Areas in which BT's dominance can be shown to have balked competition are appended.

TMA thinks the means of salvaging competition and choice is first by making OFTEL more powerful. This can be achieved by staffing OFTEL with persons of the calibre and experience to confront and control BT and prevent its predatory activities for long enough to let the new competitive market forces become effective: OFTEL could be further strengthened by adjusting its terms of reference to include all forms of telecommunications, including allocation of frequencies, cable TV and the international representation of the UK's interests.

The second can be achieved now by issuing a policy statement directing that standards must relate only to safety and to non-interference with the network.

In the meantime, the Department urgently needs experienced technical help in its task of defining and implementing Government policy and controlling BT. The TMA urges the appointment or secondment of staff, independent of BT and of industry, to give unfettered comment and advice on the supply, service, engineering and user aspects of telecommunications.

Business users are increasingly conscious of the benefits to be obtained from a liberal regime. TMA is ready to develop the points made above and to contribute in any way it can to further the attainment of competition and choice.

Telecommunications Managers Association

16th December, 1983

Institute of Administrative Management.

AREAS IN WHICH BT'S DOMINANCE HAS BAULKED LIBERALISATION

- a. insisting on over-specification and unreasonable self-protection in the formulation of the BSI standards. This imposes significant delay on their promulgation and, hence, on the acceptance of new apparatus. This delay is crippling to new entrepreneurial manufacturers.
- b. refusing to countenance the inclusion of voice services (especially radio linked) in the VANS General Licence, followed by unreasonable resistance to applications from prospective licensees to operate under it.
- c. forcing the postponement for 7 years of re-sale of leased private circuits and opposing the implementation of shared use of them, directly contrary to the recommendations of Professors Beesley and Littlechild and to the ruling of the EEC Commission.
- d. using their ownership of and their right to maintain the existing telephone wiring in office buildings and their right to inspect and approve privately installed wiring as the means of discouraging alternative private wiring and private supply of the associated PABXs.
- e. manipulating current tariff arrangements to inhibit post-liberalisation competition.
- f. using its vast purchasing power to discourage its established large UK suppliers from selling to the private sector and thus from developing exports.



10 DOWNING STREET

CR

Lord Onufrey

Hof C

1630 on Tues 20th

$\frac{1}{2}$ hr + Kenneth Baker

then confirm with KB's office

Cawthra

CR

Confirmed with Lord OE
and Kenneth Baker.

Lord OE will let us have
other names asap.

DHB
13/12

13th December 1983

Thank you for your letter of 13th
December, together with its enclosure.

Caroline Stephens will be in touch
with you as soon as possible about
arranging a date when you can come to
see the Prime Minister.

MICHAEL ALISON

The Lord Orr-Ewing OBE



12 Dec

file
late letter from

Dear Michael

It seems that letters take a long time. I always deliver by hand!
I have just received yours dated 8 Dec.

I would like to bring onto me

Lord Mottistoun
Gerry Neale MP
Tom Eggar MP.

I thought any memoranda on frequencies would be too detailed & technical for No 10 so I have written to Ken Baker showing the number of channels available. I attach a copy.

Yours
Tom



December 8th, 1983

House of Lords · Westminster

Kenneth Baker, Esq., M.P.,
Minister of State for Industry and Information Technology,
Department of Trade and Industry,
1-19 Victoria Street,
London.
SW1H 0ET

My dear Kenneth

Radio Frequency Allocations

Frequencies for radio channels are a precious national asset, with which I have been concerned for the last 50 years. The lack of frequencies has always been the excuse to prevent the expansion of broadcasting, television and, more recently, mobile radio. It would be wasting your time if I set out the horrible history. The history under this Government has been no different. It can be summarised as follows:-

- (i) The World Administrative Radio Conference (which meets every 25 years) met in 1979. They recommended an additional 280 MHz for mobile radio. This included 84 MHz in Bands 1 and 3.
- (ii) A Cabinet meeting in early 1980 agreed not to allocate any more spectrum until 1985.
- (iii) The Home Office then commissioned a report, called Terrestrial Land Mobile, published in 1982, which recognised that there was an urgent need for extra frequencies.
- (iv) The Government then called for the Merriman Report (presumably as a further delaying tactic) and this took another year. This officially recommended Bands 1 and 3 be cleared by January 1st, 1985..

The excuse for delaying until 1985 (by coincidence the same date arising from the Cabinet Committee in 1980) was that household TV sets were still working in Band 1. The BBC Birmingham transmitter recently went off the air for three weeks and no one complained. I designed the HMV TV receiver for this Band in 1936, and it will be much more valuable in a museum if any one is still working. The valves have not been manufactured for decades.

I only include this comment because it exposes the manner in which false arguments are utilised by those who use scarce frequency assets.

As the Bands are to be free by 1st January 1985, it is important for land mobile companies to receive their allocation a year ahead so that they can plan their networks, acquire sites, go out to tender to manufacturers, so that everything is ready on the due date.

Meanwhile, there are VHF channels available, contiguous with present allocations, as follows:-

Mobile Tx - 159.925 - 160.550 MHz
Base Tx - 164.425 - 165.050 MHz

There are also additional channels in the old private Marine Band, as follows:-

Mobile Tx - 157.425 - 158.425 MHz
Base Tx - 162.025 - 163.025 MHz

Additionally, there is the international Marine Radio Service Band which has about 50 further channels at a lower frequency than the private Marine Band. One MHz accommodates 40 channels.

I could produce endless quotations from Ministers promising "fair and free competition" as a result of the BT Bill. Quite apart from the huge allocations in the 900 MHz Band, BT has 112 VHF channels and their biggest independent competitor has 17.

The above proves that with determination the Government could markedly reduce this imbalance almost immediately, and this would be a godsend to the 47 mobile radio companies who are being shamefully treated.

yi wai
Tan

What about an announcement during Report 3rd Reading in Commons?

CONFIDENTIAL

✓ cc Mr Alison

MR. TURNBULL

Lord Orr-Ewing has misunderstood or is not fully aware of the implications of our telecommunications policy for radio services.

The decision to license only BT and Mercury to provide national public telecommunication networks does rule out the possibility of a national radio network competing directly with Mercury and BT during the next seven years. However, it does not rule out opportunities for small companies providing radio services on a local or regional basis, or even specialised national networks (eg for road haulage etc), as Lord Orr-Ewing seems to think.

We do wish to encourage small businesses to develop particular market segments to meet an unsatisfied demand, particularly if new technology is involved. The recent statement on future competition policy in telecommunications is quite clear on these points.

"For telecommunications systems serving specialised market segments, Government policy is as liberal as practicable."

"The Government will also be exploring the scope for introducing further mobile radio services when the Bands I and III frequencies become available in 1985. Moreover, the Government will keep under consideration ways of introducing new specialized services by satellite."

Lord Orr-Ewing refers to the need for more radio frequencies to be made available. There is a practical problem in allocating more frequencies at the present time. This is the main reason why we have only licensed two national cellular mobile radio telephone networks and indeed we have found it difficult to accommodate Mercury's needs. However, the reference to Bands I and III becoming available in 1985 is a result of a reallocation of the old 405 line television frequencies. This will provide perhaps 150 additional channels which will give significant scope for further private sector radio services. It may also be possible to squeeze out additional frequencies from current allocations for specialised services.

/Lord Orr-Ewing

CONFIDENTIAL

CONFIDENTIAL

- 2 -

Lord Orr-Ewing is probably not aware that Norman Tebbit is intending to publish a consultative document early next year on the allocation of new frequencies. We shall be particularly interested in the views of small companies and potential new entrants into the market. The consultative document will also seek views on the question of interconnecting specialized radio services with the national telecommunications networks.

Lord Orr-Ewing should be reassured that our policy on telecommunications is consistent with our general policy objectives. His letter does indicate, however, that we should take every opportunity to explain our policy and its implications.

DLP.

DAVID PASCALL
8 December 1983

CONFIDENTIAL

File



10 DOWNING STREET

8th December 1983

Dear Sir

Your letter of 1st December, about which we spoke on the telephone, has now filtered through to me!

Your letter to the Prime Minister of 5th December, has also arrived in the office. I have not yet received your memorandum which you mentioned that you would be sending in, together with a suggested list of your fellow Peers who might come to see the Prime Minister. As soon as this arrives, I will look into the possibility of a meeting with the Prime Minister.

Yours ever
Michael

MICHAEL ALISON

The Lord Orr-Ewing

020
MR PASCALL

cc \ Mr Turnbull

NOTE OF MEETING, TUESDAY, 6 DECEMBER 1983

BRITISH TELECOM

File

Present: Colin Brown (Chairman's Office)
Douglas Perryman (Board Member for Finance)
Board Member for Corporate Planning
John Redwood

A wide-ranging discussion which included the acquisition of ICL, INMOS and privatisation prospects.

A. ICL

The attached paper gives the background on why ICL cannot supply all their needs, but suggests in paragraph 5 that ICL could still obtain £35 million of revenue per annum for the next 2 years from BT's equipment budget. They said that the source of the rumours concerning the bid for ICL came from Geoffrey Sterling at the DTI, and he was voicing the opinion that the Prime Minister would support this scheme.

B. INMOS

INMOS has been offered twice to BT, but they still do not think they have any interest at this juncture.

C. Privatisation

- (a) Balance-sheet gearing. The Treasury are suggesting a one-to-one debt equity ratio. BT have opened the bidding at 0.3:1.
- (b) Dividend payment. They are discussing dividend payments in the range of 125-150 per cent of the market equity yield. On a 6 per cent dividend yield (125 per cent) the net cost would be £430 million, and they believe this could be accommodated within the cash flow predictions they are making. They believe that even allowing for the payment of tax and the capital budget, they might be able to hold level gearing over the ensuing years, even with this level of distribution. This would be based on balance-sheet gearing at inception at their level rather than at the Treasury's level.
- (c) BT favour a US sale concurrently with the UK sale, and believe an early decision in principle should be taken before the end of

this calendar year, so that all the technical difficulties with the SEC can be surmounted in good time.

- (d) BT also favour a workable scheme of share sale to customers. Exploration still seems to be in its early stages. I mentioned the possibility of using either the Post Office or the National Savings Scheme to facilitate transfer between share purchasers, many of whom would not have a stockbroker. They are also investigating the type of loyalty bonus that should be used. There are legal and taxation difficulties in the way of setting up a BT Unit Trust for share purchasers.
- (e) RPI-X. The Treasury under Mr Christie is still pursuing the vexed question of long-run marginal cost. BT believe this is a will-o-the-wisp, and I agree with them. At some stage in the near future, a meeting has to take a decision about the value of X which should bear in mind the origins of the scheme. The intention was to provide a control in the period when competitive powers are not sufficient to act as a protection, particularly for the domestic customer. BT favour the choice of a narrow basket of services for the RPI-X formula, which concentrates on local calls for domestic users; but would then argue that X should be a relatively small number, as these will remain the high-cost services. They would accept a wider basket of services giving more scope for cross-subsidisation and a larger value of X.

It would seem to me important that an early decision is taken on the question of whether there is going to be a US sale. If so, bankers and brokers should be appointed in the States charged with the tasks of preparing the documentation for the SEC and pledging themselves to sell a certain proportion of the equity. Similarly, the British bankers and brokers should be appointed and nailed down as soon as possible on the rough terms of the sale in relation to dividend payments and stock market rating, and should come to a swift conclusion on the question of the offer for sale to the customer public.

BT dislike the Treasury's interest in producing a system for marketing BT's debt. They believe this would be problematic, given the relative size of BT's debt to the current debenture and loan stock

market; and also think it would be too much to absorb immediately after the equity issue. I would want to see more views on this subject before coming to a conclusion.

A handwritten signature in cursive script, appearing to read 'John Redwood', written in dark ink.

JOHN REDWOOD

Instruct Lowered Load

BT Paper re
Computer Requirements

1. INLAND REVENUE 2988

DPE received a briefing from ICL in October that suggested two dual 2988 machines would give a processor power of 7.6MIPS. During my attendance at a conference in Florence last month I met John Carroll of CSC who are handling the Inland Revenue contract. Over dinner, in the presence of a member of ICL management, he mentioned that they had had delivery of a 2988. At switch-on there had been a small fire caused by a short-circuit in one of the processor boards. Apart from this false start they had found that transferring their load from a 2966 to the 2988 they had obtained only a 20% improvement. After a lot of work this had increased to 40% and ICL had only reckoned they could reach a 50% improvement. After discussion today the position was still the same. The likely power of a dual 2988 was unlikely to be better than 2.5MIPS and therefore I deduce that two duals would represent something less than 5MIPS.

2. TWO DUALS v. ONE LARGE MACHINE

The main argument for one large machine is to demonstrate a proven system that can handle 900-1000 terminals with a transaction rate of 12-15 per second and giving an acceptable response. There is also a need for significant power to handle a large integrated database. We do not have full dual working of our 2966s and do not know when we will have available software to drive a double dual 2988 configuration.

3. SINGLE DATABASE

The prime reason for a single integrated database is to provide a fully effective front and back office system. This is because a single database provides:

- a. minimum software overheads and therefore best response
- b. better synchronisation with simplified recovery
- c. no redundancy
- d. design flexibility

This can be achieved provided that care is taken with the initial design. Change may be simpler than with a family of systems which would, in any case, be difficult to keep completely in step. The operation of such a database requires a large processor power.

4. COLOUR TERMINALS

Colour terminals are essential to give better identification of information, easier input, less confusion and strain and therefore a faster response by the human interfacing with it. It is simply a much friendlier terminal.

5. VALUE OF HARDWARE

Over the next two financial years we expect to spend approximately £70 million on central hardware and £70 million on terminal hardware. On the basis that we dual source all items, the best approach, this could mean £35 million of revenue for ICL in each

of the next two years. This takes no account of discounts,
hardware spares, software licences or maintenance charges.

5 December 1983

CE NO

Prime Minister ②

BI



To note Treasury view.
 Note by John Redwood also
 attached
 6/12
 TF

Treasury Chambers, Parliament Street, SW1P 3AG
 01-233 3000

6 December 1983

A Turnbull Esq.
 Private Secretary
 10 Downing Street
 LONDON
 SW1

Dear Andrew,

CABLE AND WIRELESS SALE: BRIEFING

We have taken a robust line with the Press over the undersubscription of the Cable and Wireless issue, which closed on Friday 2 December with applications received for 77.5 per cent of the shares offered (7½ per cent higher than the first estimates made on Friday). The result is rather hard to interpret, but the most plausible explanation is that the market misinterpreted the rise in the price during the offer period. Individual investors concluded that the striking price would be too high and as a result they did not apply for the offer.

It is too early to draw general conclusions: we shall need to look carefully at the events of last week and at the behaviour of the aftermarket. In the meantime, the line we are taking is summarised in the enclosed briefing, which the Prime Minister may find useful.

I am copying this letter to David Heyhoe in the Lord Privy Seal's Office.

Yours
 Judith

PP. MISS M O'MARA
 Private Secretary

General line

Stock market is inherently unpredictable. That is why we have issues such as this underwritten.

Quite wrong to talk of a serious failure. The issue was over 77 per cent subscribed. The small investor and everyone else who applied had a very reasonable deal at 275p. There was an encouraging number of small applicants.

The Government has in fact realised higher proceeds than could have been envisaged when it originally announced our intention to sell about half or holding on October. The price then was 260p.

Why was the issue not fully subscribed?

Difficult to say. One has seen a number of suggestions in the Press. It does seem that some investors may have been put off by what they considered to be exaggerated expectations of the likely tender price.

Does this raise questions about the tender method of sale?

No.

Does it call in question the privatisation programme?

Not at all.

Is the small shareholder once again going to suffer?

All those who acquired shares did so at a very fair price. [The latest market price for the partly-paid stock is in fact 98p, ie 2p below "par"]

Improper behaviour by Directors of C&W?

[Rumour that share price fell after Finance Director had lunch with a stockbroker on 1 December.] Not for us to comment.

MR TURNBULL

CABLE & WIRELESS OFFER FOR SALE

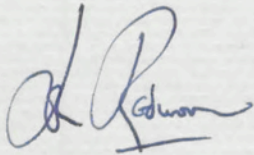
Thirty per cent of the Cable & Wireless shares were left with the underwriters last week. Early in the week the share price had been above £3 compared with a minimum tender price of £2.75 and City estimates had indicated an offer for sale price of about £3 a share being achieved. Why was it that sentiment turned so markedly in the last 2 days of the issue?

I have spoken to several people in the City who would normally have applied for such shares, and discovered they did not. They were swayed by the following considerations:

1. The lunch held at Scrimgeour's on Thursday where the Cable & Wireless board were cautious about the future. It is most unusual for such a lunch to be held so close to an issue.
2. A dislike of tenders - particularly Government ones - as many people have read them wrongly in the past.
3. One or two people mentioned the fact that it was decided during the BP sale to bank all the cheques. Whilst this is well within the rules of any issue, it is a most unusual practice and causes individuals some pain if they have been staggng on borrowed money.
4. A sense by some that they wish to warn the Government about the difficulty of selling British Telecom.

I do not think we should worry unduly about the result. The Government received a reasonable price for all its shares, and the underwriters again were reminded that underwriting is not without its hazards. The basic reason seems to have been that at the last minute people felt that they could not make money out of the issue, and this partly reflects the choice of the tender system, and partly their judgment of the market.

The only conceivable moral in the tale is that the Government could avoid adverse headlines concerning stock left with underwriters by having an offer for sale by tender with no minimum price and no underwriting. The argument for would be that it would save the underwriting fees, but this has to be balanced against the fact that the Government would not have sold the shares until the offer for sale were completed, and would not know what price it would realise at any stage in the run-up to the offer for sale. It would still be open to criticism about having sold too cheaply if all did not go well.



JOHN REDWOOD

MJ

Telegram

Ack'd 6 12

at W Owen

6 December 1983

The Prime Minister has received the attached letter from Lord Orr-Ewing. I would be grateful for your advice on whether the Prime Minister should meet him. Given the pressures on the Prime Minister's diary in the next few days this could only be done if you felt it would make a material difference to the passage of the BT Bill through the Lords.

If you do not recommend a meeting, I would be grateful for a reply which the Prime Minister might send.

AT

Callum McCarthy Esq
Department of Trade and Industry



10 DOWNING STREET

Prime Minister

I have acknowledged and sought advice from DTI on whether there is any merit in a meeting. It may well be that no adjustments to the policy are now possible, in which case there would be little point in a meeting. The only case for ~~for~~ it would be to discourage Lord Orr-Ewing from making difficulties in the Lords. But Mr Tebbit has already tried this.

Agree await DTI advice?

AT

I shall have to 6/12
mention. Would
you please enquire about
the accuracy of the last
para of his letter? no.

010
From: Lord Orr-Ewing, O.B.E.

cc/NO



December 5th, 1983

House of Lords · Westminster

The Rt. Hon. Margaret Thatcher, M.P.,
The Prime Minister,
10 Downing Street,
London S.W.1.

My dear Prime Minister

Suppression of Competition

I would not have asked to see you with some colleagues but for the fact that we have already seen Norman Tebbit and I have had many meetings with Ken Baker. There is little time left, since the BT Bill will leave the Commons in ten days. Alterations by the Lords are not welcome.

The HMG's policy on setting up a competitive telephone industry has now emerged as being far more restricted than originally envisaged. For some years there will be the following two large duopolies:-

- (i) The duopoly of telephone networks with BT and Mercury.
- (ii) The duopoly of radio services with BT/Securicor and Racal.

We may have no alternative but to accept this arrangement, although it is admitted by the DTI that by 1987 BT will have 97% of the network and Mercury only 3%. We reluctantly accept, hoping for better balance after the first phase is over.

However, your Ministers and the Civil Servants are now using this policy to limit and suppress all the companies, mainly small, which for many years have been providing VHF radio services.

However efficient a monopoly or a duopoly may be, it is essential to have a large number of licensed telecommunication companies to provide the multifarious services now possible. Moreover, our Government was elected to encourage the growth of small companies and the jobs this would create.

The manner in which the small companies have been treated during the last year is most vividly illustrated in the granting of frequency channels, which they

.../

urgently need to improve and expand their services and for economic viability. Without these channels they will go to the wall. The Ministries and the very large companies might not mourn their absorption or demise.

A year ago, when the cellular licence was allocated to Racal, I was personally told by Ken Baker that extra channels would be made available to allow the established private sector mobile telephone companies to compete, using less sophisticated and cheaper services. Free and fair competition as promised by your Ministers would necessitate private companies having a comparable number of channels to the duopoly, which have 150 each. The largest existing private company has only 17.

We are told that it is no use complaining because the policy comes from your office, with your personal approval. We cannot believe that all these facts were put before you or that you accepted the demise of the existing private companies, since this would be diametrically opposed to your policy. That is why reluctantly we seek a meeting.

Yr sincerely

Tan Oon-Keung

P.S. Just seen the enclosed leader from 'Computing' dated 1st Dec which is appert

What a marvelous speech - born at harvest.

LOCAL GOVT., Relations Pt. 10



bc: CO

10 DOWNING STREET

From the Private Secretary

25 November 1983

In Mr. Box

Sale of BT Shares

I will be showing your Minister's letter to John Gummer of 25 November to the Prime Minister on her return. Most of the action proposed is clearly on the Party network. You might, however, be interested to see the proposals which the Secretary of State for the Environment made recently for an information unit to get across the Government's view on local authority issues. As you will see from her response, as recorded in my letter to John Ballard, the Prime Minister is anxious that the dividing line between Party and Government and between information and propaganda should be very carefully observed.

Andrew Turnbull

Neil McMillan, Esq.,
Department of Trade and Industry.

My

● A.T : Margaret rang -

- did you speak to
Richard Wilson (HMT)
re Cable + Wireless?

- £275 min. underwritten
note.

6.1% Discount

£1.00 left payment
(which would
increase the
discount).

-1730 (D)
HMT
- 1st reply

S E C R E T



FUZ

16 (6)

10 DOWNING STREET

From the Private Secretary

21 November, 1983

CABLE AND WIRELESS SHARE SALE

The Prime Minister has seen the Chancellor's minute of 18 November. She agrees that approximately 110 million shares in Cable and Wireless can be offered for sale, with impact day being on Friday, 25 November. She agrees that this should be by tender, with prior sub-underwriting, with a striking price facility for small shareholders. She is also content with the wording of the undertaking on future intentions.

I am sending a copy of this letter to Brian Fall (Foreign and Commonwealth Office), Hugh Taylor (Home Office), Callum McCarthy (Department of Trade and Industry) and Richard Hatfield (Cabinet Office).

(Andrew Turnbull)

J. Kerr, Esq.,
HM Treasury

S E C R E T

(t)



NBPM
AT 22/11

ENO

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

JF4855

Secretary of State for Trade and Industry

CONFIDENTIAL

21 November 1983

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign and
Commonwealth Affairs
Foreign and Commonwealth office
Downing Street
LONDON
SW1

D. Geoffrey

BRITISH TELECOMMUNICATIONS ARTICLES OF ASSOCIATION

Thank you for your minute of 14 November on this subject. As you realise the Memorandum and Articles of Association have now been laid in the Committee and Kenneth Baker will, as I said in my letter, seek to avoid high-lighting the two thirds provision when they come up to discussion.

2 I quite agree that once the Committee stage is over Kenneth and I should look at this whole question again and in doing so we shall give weight to the points you make.

3 I am copying this minute to the recipients of yours.

NORMAN TEBBIT

Post a Telegram : Future A7.

11:12
10
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7
11/12/1951

Post + Tel
(with AT)



10 DOWNING STREET

Prime Minister

This is modelled closely
on the BP share sale:

- (i) use of a lender
- (ii) a striking price facility
to small investors
- (iii) an understanding to
make no further sale
for 2 years.

Agree these proposals?

Only Clerk

R.P. A.T

18.11.85



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

CABEL AND WIRELESS SHARE SALE

*Does the Treasury count
matter about this - we have
the T.H. man decided not
to go to the hands
no!*

In my minute to you of 25 October, I explained my proposals for a sale of about half the Government's remaining shareholding in Cable and Wireless plc (C&W).

2. I am now aiming for Friday 25 November as impact day. The shares stood at around 260p when John Moore announced to the House on 27 October our intention to sell about half of the Government's shareholding. It has since strengthened and the interim results announced on Wednesday have made little difference to the price, which rebounded after an initial fall, closing tonight at around 295p. The Company is confident that shareholders will approve the Special Share (to which I referred in my earlier minute) at the EGM on 23 November.

3. I firmly believe that we should go ahead on Friday 25 November, and seize the favourable opportunity the market provides.

4. I understand that the next round of talks with the People's Republic of China over the future status of Hong Kong will take place after the share sale is completed, on 7-8 December. Foreign and Commonwealth Office officials have advised mine that the risk of an outcome which would adversely affect public confidence in the Company is not such that HM Government could reasonably be accused of having had foreknowledge which it withheld from prospective investors.

5. I intend that, as with the highly successful BP offer in September, the share sale should be by means of an underwritten tender.



6. I also propose that, once again, arrangements should be made to encourage small shareholders to participate by enabling them to make striking price applications, which would receive preferential allotment in the event of over-subscription.

7. The prospectus will include the following statement on the Government's future intentions for further sales of C&W shares:

"HM Government has no plans at this stage to sell any more of its present holding in Cable and Wireless and will not do so in the next two years".

8. I have not finally decided the size of the sale but my preference is still to sell a little over half of the Government shareholding, that is 110 million shares, to raise approximately £300 million. Market conditions may be such that we will have to settle for a little less and I propose to take the decision in the light of the latest evidence.

9. As in the case of BP, this sale will be conditional on successful sub-underwriting. I propose to arrange for a written answer to be given as soon as this has been achieved. The outcome may or may not be known by the time that the House rises at 2.30pm on impact day. If it is not, the answer will be given on Monday 28 November.

10. I am sending a copy of this minute to Geoffrey Howe, Leon Brittan, Norman Tebbit and Sir Robert Armstrong.

N.L.

18 November 1983



CC HMT
HO
FCO
CO

HL

10 DOWNING STREET

From the Private Secretary

17 November 1983

Further competition policy in Telecommunications

The Prime Minister has seen your letter to me of 16 November to which was attached a copy of the statement Mr. Baker was proposing to make in the Standing Committee considering the Telecommunications Bill. She was content with the statement which takes adequate account of the points made in my letter of 7 November.

I am copying this letter to John Kerr (H.M. Treasury), Hugh Taylor (Home Office), Brian Fall (Foreign and Commonwealth Office) and Richard Hatfield (Cabinet Office).

Andrew Turnbull

Callum McCarthy, Esq.,
Department of Trade and Industry.

Jul



Amend
ms

10 DOWNING STREET

Prime Minister ^①

Attached is the revised Statement on Competition Policy in Telecommunications. It meets your main comment on the earlier draft, that the Mercury/BT duopoly should last 7 years.

DTI have considered the other points we put to them (which were aimed at increasing the competitive slant of the statement) and have moved in the right direction on most of them.

Agree Mr Baker may make the statement?

AT 16/4

MR. TURNBULL

FUTURE COMPETITION POLICY IN TELECOMMUNICATIONS

Safeguards for Mercury

The revised statement meets the Prime Minister's principal concern that Mercury ^{should} have time to justify its investment ^{and} to establish itself as a viable competitor to BT. No further licences will be issued to operators of national public telecommunications networks until 1990 when the position will be reviewed. Similarly, alternative forms of competition ^{which could adversely affect Mercury} such as simple resale or satellite services interconnected with the public switched networks will not be allowed before 1989, ^{a date acceptable to Mercury} L

Obligations on Mercury

The statement now refers to the new Mercury licence containing:

"specific obligations about the installation of the Mercury network on a national basis ^{having regard to} ~~taking full account~~ of Mercury's commercial plans". P.3.

The Mercury partners have agreed to accept national obligations which take account of their commercial interests. In these circumstances we are content with the revised wording in the statement despite some misgivings about the potential conflict which may arise between Government imposed obligations and Mercury's commercial judgement.

Market Opportunities up to 1990

The statement now refers to the Government:

"exploring the scope for introducing further mobile radio services.... PS keeping under consideration ways of introducing new specialised services by satellite". PS

We would have preferred to see a more positive reference to the Government's willingness to license specialised network services on a local, regional or national basis, but accept the above wording in view of the need to issue the statement as soon as possible.

Thereafter it will be important to ensure that adequate encouragement is given to the development of new technologies to meet unsatisfied market demands. These opportunities are not inconsistent with the duopoly for public switched telephone networks.

DLP

DAVID PASCALL
16 November 1983



JU956

Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

16 November 1983

Andrew Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Dear Andrew,

FURTHER COMPETITION POLICY IN TELECOMMUNICATIONS

I enclose a copy of the statement which Mr Baker proposes to make in the Standing Committee considering the Telecommunications Bill shortly after 10.30 am on Thursday 17 November.

The text represents the outcome of detailed negotiation with BT and the Mercury partners. Following receipt your letter of 7 November my Secretary of State discussed the period of duopoly with Mr Eric Sharp and Mr Malpass of BP. In the light of their representations about the size of the investment they are contemplating he agreed that a period of seven years from the date of the statement is justified. Both Mercury and BT were, however, prepared to contemplate the introduction of unrestricted "resale" from July 1989, which is when the draft BT licence says that the RPI minus x formula will expire. On this basis the Mercury partners are willing to accept an obligation to develop their network on a national basis. The draft statement makes clear that this will take account of Mercury's commercial plans.

On interconnection my Secretary of State does not believe that BT will be able to dictate the terms. The draft BT licence contains tough conditions about interconnect and the Director General of Telecommunications is given clear powers of direction when there is a dispute. Indeed, BT itself is protesting loudly about what is proposed. There will be standard interconnect terms for small operators which will be published for all to see. Unfortunately when it comes to large systems like Mercury it is not possible to think in terms of generally applicable principles; each system is unique and requires different interconnect arrangements. I think all concerned now understand that interconnect will be administered without any undue preference or undue discrimination.

If statement delayed, it could affect Cris prospectus



So far as specialised network services are concerned page five of the statement explains that the Government is following a liberal policy. There is a special reference to specialised services provided by satellite.

The radio spectrum is, unfortunately, a limited resource. For the immediate future there is no scope for licensing additional networks and there are difficulties in accommodating Mercury's needs. The statement does, however, mention the Government's plans for the future of television Bands I and III and my Secretary of State plans to circulate a consultative document shortly.

I am sending copies of this letter to those who received yours.

Yours ever

Cath McCarthy

M C McCARTHY
Private Secretary

2nd Revise: 16 November 1983

JF4745

DRAFT STATEMENT ON FUTURE COMPETITION POLICY FOR TELE-
COMMUNICATIONS

The Government have been pursuing a consistent policy of seeking to introduce competition into the three main sectors of the telecommunications market: the supply of apparatus for connection to networks, the provision of services over networks and the running of networks themselves. The process has been a gradual one, because we have been determined to avoid market disruption and to give all concerned - BT, its traditional suppliers and new market entrants - an adequate opportunity to adjust as we progress to the competitive environment. Much progress has been made and the Government have been considering the strengthening of competition in the future.

So far as apparatus connected to BT's systems is concerned, we have introduced independent standards-making arrangements under the aegis of the British Standards Institution (BSI) and an independent approvals system under the new British Approvals Board for Telecommunications. BSI is drafting the independent and objective standards which apparatus must meet before connection to the BT networks. This work is expected to be substantially complete by end-1984. My Hon Friend will shortly be announcing revised arrangements for BT approvals of products which it itself sells. Like the USA the UK will shortly enjoy a

completely independent system of approvals for telecommunication apparatus.

I announced in February the Government's intention to introduce competition into the two remaining significant areas of apparatus supply from which it had hitherto been excluded. I can now confirm that from the end of 1984 the BT monopoly of supply and maintenance of the prime telephone instrument connected to the BT systems will end for those customers who have a standard socket fitted by BT. BT have agreed to provide such sockets on demand.

Maintenance of newly-installed call-routing apparatus is being progressively liberalised and will be fully open to competition by February 1987.

In short, in the brief period since the British Telecommunications Act came into force in October 1981 we have moved from a position of almost complete monopoly of apparatus supply to a position where a completely open and competitive market is in sight.

I turn now to services provided over public telecommunications networks. The convergence of computing and telecommunications technology has created an entirely new market for these Value Added Network Services, or VANS. The VANS General Licence authorises anyone who registers with my Department to run telecommunication systems to provide such services over public networks. This is the most liberal VANS regime in the world. The essential condition imposed on those who offer VANS is that they must provide a service over and above the basic telecommunication service of conveying or switching a message. Some

60 VANS providers have registered under the General Licence their proposals for some 200 different services. I expect a continuing rapid development of this sector of the market.

I turn now to the provision of public networks. It is in this area that we have taken the most far-reaching steps towards competition. The provision of the telecommunications infrastructure has traditionally been the preserve of single monopoly operators throughout the world.

In this country, however, we decided on a different course. We encouraged the development of a separate and independent network, Mercury Communications Ltd, which has been licensed to provide every form of digital telecommunication service, including private leased circuits, switched services to business and domestic premises and the full range of international services. We expect Mercury to develop into a national public telecommunication system and we intend the new licence to be granted to Mercury under the Telecommunications Bill to contain specific obligations about the installation of the Mercury network on a national basis having regard to Mercury's commercial plans. Mercury will have a licence similar to BT's.

The creation of a new network requires very large investment, which will mean a long period before the investment can yield a return.

Mercury therefore needs time to install and consolidate its national network. Similarly, British Telecom also needs time to

adjust. Its public telecommunications system was developed as a unitary and integrated network without thought of competition and it needs time to adapt to competition.

Telecommunications can only be provided by means of cables or radio. The installation of cables may have undesirable effects on the environment and disrupt highway surfaces and traffic. The radio spectrum is a limited resource, with many competing demands on it. It would not be right to license a multiplicity of operators in any one area to install overhead wires or to dig up streets nor would it be practicable from a radio spectrum standpoint, at least for some time to come, to license more than two national public telecommunication networks.

Government therefore gave assurances when the Mercury licence was first granted in 1982 that for the foreseeable future we would not license any additional national public telecommunications network.

To avoid uncertainty the Government have now decided to make it clear that we do not intend to licence operators other than BT and Mercury Communications Ltd to provide the basic telecommunication service of conveying messages over fixed links, whether cable, radio or satellite, both domestically and internationally during the **seven** years following this statement.

The position will then be reviewed. In the Hull area, the City of Kingston upon Hull will continue to exercise the functions of public telecommunication operator.

For telecommunication systems serving specialized market segments, Government policy is as liberal as practicable. The Government has already licensed two national cellular mobile radio telephone networks. They will provide increasing alternatives to BT and Mercury at the local level but their role will be limited to providing mobile radio telecommunication services. The Government will shortly be licensing the first new broadband cable networks; and as the Cable White Paper made clear cable companies will be licensed to offer a full range of telecommunication services within their licensed areas but only BT or Mercury will be permitted to offer voice telephony services on cable systems either alone or in partnership with the cable companies. The Government will also be exploring the scope for introducing further mobile radio services when the Bands I and III frequencies become available in 1985. Moreover, the Government will keep under consideration ways of introducing new specialized services by satellite. The cellular radio companies, the cable operators and other operators, including private mobile radio, will be required to obtain the fixed links connecting their systems to other systems only from BT, Hull and Mercury.

Arrangements for interconnecting different telecommunication systems are particularly important. The Government intends that any subscriber to one public telecommunication system should be able to call any subscriber to other public telecommunication systems. The Telecommunications Bill and the licences to be granted under it will provide Mercury with a right to compete

equally, and to interconnect with, BT. The draft British Telecom licence published on 25 October contains an obligation requiring BT to connect or to permit the connection of its systems to any other system where the operator of the other system is licensed to connect and requires the connection. A similar obligation will be contained in the new Mercury and Hull licences. It will be for BT, Mercury and Hull to negotiate the technical and commercial terms for the connections both between their systems and between their systems and other systems. Connection may be on standard published terms where applicable or by agreement between the operators. Where there is no agreement, those concerned will be obliged to carry out connections on terms and conditions laid down by the Director General of Telecommunications. The methods and arrangements by which connection can be effected are complex and will be the subject of future discussions with the relevant parties.

The BT licence leaves open the possibility of the future introduction of various forms of "resale" of leased circuits. So will the new Mercury and Hull licences. The Government have decided to explore the scope for reducing some of the restrictions currently imposed on the use of circuits leased from BT and Mercury. We are therefore discussing the possibility of allowing group use of inland leased circuits, including the sharing of spare capacity on such circuits, and some easing of the current restrictions on the interconnection of leased circuits and the public switched networks. The Government expects to reach conclusions on these issues in the New Year. So far as "resale" of international circuits is concerned the Government

stands by current international agreements. We are also considering whether appropriate terms and safeguards can be devised to allow BT and Mercury to bring into public use in their networks spare capacity which may be available on privately owned networks.

Some forms of "resale" and satellite services, combined with interconnection with the public switched networks, could develop the characteristics of an additional network. The Government wishes to emphasise that any developments in policy on "resale" or satellite services will be consistent with the policy I have outlined today which is not to licence anyone other than BT and Mercury to run national public telecommunication networks until November 1990 at the earliest. Other forms of resale than those I have just described will not be licensed in the period before July 1989 which corresponds to the period in the BT licence for the RPI minus x formula.

Our liberalisation policy aims to increase consumer choice and to stimulate both greater efficiency in the use of national resources and encourage growth and innovation. The competitive framework I have outlined will enable those aims to be achieved and will allow BT, Mercury and all the other companies in this rapidly expanding industry every opportunity to prosper through fair competition to the benefit of consumers and their workforces and the economy generally.



JH 136

PS/Secretary of State for Trade and Industry

ce ~~NO~~
DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

15 November 1983

A Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Prime Minister

Dear Andrew

FUTURE COMPETITION POLICY IN TELECOMMUNICATIONS

Thank you for your letter of 7 November ^{with AT} recording the Prime Minister's views on the draft statement sent by my Secretary of State on 4 November.

2 My Secretary of State has been guided by the views set out in your letter. He met the Mercury partners on 10 November, when they made clear that provided there was an appropriate period of duopoly and provided the national obligations they would agree to take on took account of their commercial interests, they would be content. On this basis, the Secretary of State believes that a satisfactory solution can be met on both timing and the national network, which is fully in accord with the Prime Minister's comments.

3 He is also considering possible changes in the arrangements for enforcing interconnection in light of requests from the Mercury partners. He accepts the point made about specialised services, particularly mobile radio and will amend the statement accordingly.

4 I am copying this to the recipients of your letter.

Yours ever

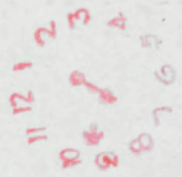
Callum McCarthy

M C McCARTHY
Private Secretary

Poster to
Future
Pt 7

CONDOR

15 NOV 1985





FCS/83/230

SECRETARY OF STATE FOR TRADE AND INDUSTRY

British Telecommunications Articles of Association

1. Thank you for your letter of 9 November.
2. I understand the political pressures that persuaded Kenneth Baker to include the two-thirds provision in the BT draft Articles of Association. I can also understand Kenneth Baker's fears about consulting the European Commission. However, I am not sure I would agree with you that the provisions in the draft Articles are 'essentially uncontroversial'. There is a prima facie case that they contravene Article 52 of the EEC Treaty; and the Commission may choose to see them as a possibly dangerous precedent. Nor does it seem to me that they are 'obscure'. As you say, the possibility of foreign control has received considerable publicity, and the provisions in the draft Articles have been included precisely because of this. It seems to us very likely that at some stage, perhaps fairly soon, the inconsistency between the draft Articles and the Treaty will come to the Commission's notice.
3. You may be right in feeling that the Commission will understand our basic requirements. If so, our best course might be at some stage to take them into our confidence, explain the purpose of the provisions and plead special circumstances. At the very least, we would thus be able to avoid a row at a time not of our choosing (for example, when the share flotation is under way); and perhaps bargain to retain the important provision that the Chairman/Chief Executive should be British.
4. Since we may face a possible case at the European Court of Justice, I hope you will feel able to alert the Law Officers at an early stage. In any event, I hope your officials will be able to let us have a considered statement of the case on



national security grounds which we could deploy in Brussels if challenged. We need this urgently if we are to be ready to meet any accusation from the Commission or others that the provisions in the draft Articles are in breach of the Treaty.

5. I do hope that, once the Committee Stage is over, you will feel able to look at this whole question again.

6. I am copying this letter to the recipients of yours, and to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

14 November, 1983

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Treasury Chambers, Parliament Street, SW1P 3AG

Mr Kenneth Baker MP
Minister of State for Industry
and Information Technology
Department of Trade and Industry
1 Victoria Street
LONDON SW1

10 November 1983

Dear Kenneth,

TELECOMMUNICATIONS COMPETITION

I found our discussion this morning most helpful. The exigencies of the timetable for the sale of Cable and Wireless shares are, I know, an additional complexity for your timetable on top of an already complicated set of factors including the Mercury-POEU case, negotiation with BT, Mercury and Cable and Wireless and the requirements of the Committee on the Telecoms Bill. I am most grateful for the appreciation you showed in these circumstances of the need to finalise the terms of the statement quickly.

For my part, I found our discussion of de-restricting resale encouraging. We are agreed that much depends on the attitude of Mercury and Cable and Wireless and I fully support your intention to discuss this in strictest confidence with Eric Sharp, Sir Michael Edwardes (and BT) as soon as it can be arranged. If, as seems to us possible, Mercury and C&W feel that unrestricted resale would not have a major damaging effect on Mercury's prospects, then I would want to press for the statement to be more forthcoming on this than at present - perhaps even going so far as to contemplate unrestricted resale from 1987 onwards, or, failing that, at least to make more concrete the proposals for wider licensing of particular types of resale in the penultimate paragraph of the present draft.

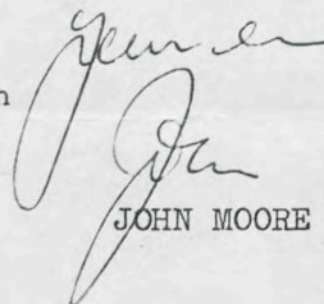
If however Mercury and Cable and Wireless do believe that unrestricted resale would seriously threaten Mercury's prospects, I would not wish to press for it. It is common ground between us that Mercury must be effectively established.

On the issue of the imposition of new national obligations on Mercury, we are agreed that the vital thing is, once again, for discussions with Mercury and Cable and Wireless (and no doubt BP) to proceed with all speed. I was heartened to learn that your officials were confident of the chances of a successful compromise being reached which was both fully commercially acceptable to Mercury and its backers, and would help you in your objective of demonstrating the potential of Mercury as a national competitor to BT.

We discussed the constraint on the length of the discussions imposed by the timing of the Cable and Wireless sale. I know you are fully sensitive to this imperative and will seek to ensure it is met. In my earlier letter I said that the statement ought to be made by Friday 18 November so as to allow the markets time to digest it. It would still be best to achieve this if we can. But we agreed that Tuesday 22 would also be possible, as a last resort, if absolutely unavoidable, though this could unsettle the market for the sale.

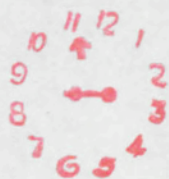
Finally we touched on the new point which arose last night about the relationship between the Mercury-POEU case and the statement. We agreed that urgent legal advice was needed on whether the statement would in fact weaken Mercury's case and, if so, how. Your legal advisers are preparing this in consultation with Mercury's. I have asked Mr Hosker to keep in close touch with this so that he can brief the Chancellor and myself on the outcome. There was some feeling round the table that the statement would not weaken the case. I very much hope that this will prove to be the judgement of the experts.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Leon Brittan and Sir Robert Armstrong.



JOHN MOORE

11 NOV 1983





DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

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JU887

Secretary of State for Trade and Industry

9 November 1983

CONFIDENTIAL

The Rt Hon Sir Geoffrey Howe QC MP
Secretary of State for Foreign
& Commonwealth Affairs
Foreign & Commonwealth Office
Downing Street
London SW1

Prime Minutes ②
To note that Mr Baker will
be announcing that a
majority of the BT board
should be British. FCO
wanted only Chairman / chief
Executive to reduce risk
of EC challenge.

MS

Dear Foreign Secretary,

AT 9/11

BRITISH TELECOMMUNICATIONS ARTICLES OF ASSOCIATION

Thank you for your minute of 4 November, which was discussed at a meeting of officials on 8 November at which the Home Office, Treasury and Cabinet Office were present.

2 I think all concerned agree that, despite the many similarities between Cable and Wireless (C&W) and British Telecom (BT), there are substantial differences between the two companies: C&W's activities are mainly overseas whilst BT's are nearly all in this country; BT's operations are far more important to the conduct of HMG's business than are C&W's; C&W has had Articles of Association for over half a century, while BT as yet has a blank sheet of paper on which we can make a clean start; and the flotation of BT is a matter of great political controversy while the sale of further shares in C&W is not. In the circumstances the Articles of Association of one company need not form an exact precedent for the other.

3 The controversy about the flotation has caused Kenneth Baker to look closely at the draft BT Articles of Association. As you will have seen, there has been an extensive campaign of press advertisements which has drawn attention to BT's importance to national defence etc and to the dangers to national security if foreigners gain control of the company. This campaign has seemed to be exploiting a sense of genuine unease and our backbenchers have been affected. Kenneth Baker, who is facing a difficult task with the Telecommunications Bill in Committee, judges that to allay concern the BT Articles must include provisions which will demonstrate to the man in the street that facilities essential to both national economic and social well being as well as security should not pass under the control of foreigners. He would prefer all the BT Board to be UK nationals but is prepared



to accept a requirement that only a clear majority (7 out of 10 or 10 out of 15) should be UK nationals.

4 Kenneth has noted your officials' concern about the risk of challenge in the European Court and their belief that the only risk-free path is either to drop the provision about the nationality of the Directors or to require the majority to be EEC nationals. He also understands that a challenge to the Article about the Directors could lead to the provision about the Chairman or Chief Executive also being lost. He considers, nevertheless, that the political pressures are so great that we should take the risk. He also sees no merit in the idea that we should consult the Commission before the Articles are finalised, since it would draw the attention of those who could challenge us to an obscure and essentially uncontroversial provision in circumstances which would invite them to make difficulties. I agree with him. Kenneth therefore intends to make public the draft Articles of Association, with the two-thirds provision, at around 10.30 on Thursday 10 November.

5 Kenneth will not highlight the two-thirds provision. If there is discussion he will take the line that the provision is not intended to preserve the "Britishness" of BT plc (which is clear - although he will not say so - from the fact that there is no provision to stop a majority of the shares passing into foreign ownership), but rather to secure, as is done in all other states within the EEC, that the day-to-day management of a company which runs facilities of vital importance to national defence, civil defence and public administration both in peace and war remains in the hands of UK nationals. Foreigners will be able to join the Board but at all times there will be a majority of Board members ready to protect UK national security interests. We feel the Commission understand these basic requirements and in view of the public value of other PTTs in the Community and their consequent exemption from the Treaty provision it seems unlikely that other Member States will challenge this.

6 I am sending copies of this letter to the recipients of yours.

Yours sincerely
Norman Tebbit

NORMAN TEBBIT

(approved by the Secretary of State
and signed in his absence)



cc No

Treasury Chambers, Parliament Street, SW1P 3AG

Rt Hon Norman Tebbit MP
 Secretary of State for Trade and Industry
 Department of Trade and Industry
 1 Victoria Street
 LONDON
 SW1H 0ET

8 November 1983

Dear Secretary of State

COMPETITION POLICY AND TELECOMMUNICATIONS

Thank you for sending me a copy of your minute to the Prime Minister of 4 November with its attached draft statement. I have also seen the Prime Minister's comments of 7 November. I have previously discussed these matters with Nigel Lawson and in his absence I would wish to make the following points.

The draft statement is very important for two reasons:

- it will set the competitive framework for the privatisation of BT and influence the climate for privatisation in general;
- it will, as you say, be a material factor for the sale of Cable and Wireless shares which I plan to make.

Competitive framework

I am satisfied with the position on apparatus supply and the provision of specialised, "value-added", services. In relation to both of these we can plausibly claim success in opening up areas where market forces are genuinely free to operate.

However in privatising BT we are in large part denationalising the transmission network. Here, in spite of the action to licence Mercury and the local radio telephone and cable services, we can make no such claim of opening up a free market. On the policy outlined in the statement the provision of telecommunications networks is and will remain a highly controlled activity with little scope for the markets to decide the future shape of the business.

I understand and broadly accept the reasons for the policy of limiting the right to install and operate network capacity to Mercury and BT. But I am concerned that by seeking to extend this policy to control the uses to which such networks may be put, we are unnecessarily limiting the potential for free markets to develop and are exposing ourselves to justifiable criticism of perpetuating monopoly (or at best duopoly). It is one thing to retain governmental control over who may install and operate telephone lines and exchanges, it is quite another to seek to control how those capital investments may be commercially exploited.

In the short-term Mercury is likely to have considerable spare capacity, the more opportunities it has to exploit this the better its chances of earning a satisfactory return. Rather than damaging Mercury's prospects resale is likely to improve them. Why should the Government be in the business of preventing and limiting the commercial exploitation of existing and new investments in this way?

It is argued that if BT were allowed to lease its spare capacity to intermediary businesses this would generate competition to Mercury on a speed and scale which it could not match. But I think we should be very careful about being drawn into governmental intervention for reasons of this kind. If BT can earn an adequate return from leasing to intermediaries so presumably can Mercury. It is for the DG OFTEL to ensure that BT does not compete unfairly by charging excessively low leasing prices but in any case this seems unlikely to be in BT's interest.

Another argument for limiting the exploitability of telecommunications networks is that this will assist the Government's objectives for breaking the existing labour monopoly of the BT unions. However this is really just another way of saying that without such limitations Mercury will not survive and I have already argued that lack of resale opportunities is as likely to harm Mercury, as the existence of such opportunities.

Impact on Cable and Wireless sale

There are three features of the statement which are relevant to the forthcoming sale of Cable and Wireless shares:

- (i) the limitations on resale - already discussed above;
- (ii) the Government commitment to the duopoly on the provisions of national networks;
- (iii) the intention to oblige Mercury to instal a network on a national basis and to provide a universal service, coupled with the earlier references in the statement to the high costs and slow returns of such an investment.

As regards (ii) I would not press for an immediate or a very early relaxation on the restriction of network provision to Mercury and BT, provided that this is not associated with parallel restrictions on the ways in which these (or any other) networks may be exploited. I believe this gives Mercury's backers fully adequate assurance and should not have any significant impact on investors' perceptions of C&W's prospects.

The proposed obligations under (iii) however are in my view likely to be a seriously negative factor. The obligations are expressed vaguely and will I believe be very disquieting to C&W investors. It is not clear what additional investments Mercury's backers are likely to be asked to commit themselves to but the implication is that these could be very substantial and could result in even later positive returns than are currently expected. I do not think these obligations should be pursued.

My understanding is that the Chairman of C&W is himself extremely concerned about them and may not be willing to proceed with the Mercury licence on this basis. (On a related drafting point we would prefer to see deleted the unnecessarily dampening reference on page 4 of the draft to the large investment and slow returns involved in network installation).

Conclusion

I believe that we should take the opportunity of this statement to stand firmly back from control over who may be permitted to exploit (as opposed to install) network investments. I believe this would help us to rebut the criticism that we are intending to perpetuate a public monopoly in the private sector, and that, by themselves, the measures of liberalisation already taken on apparatus and VANS will not be sufficient for this purpose.

Ideally I would prefer all forms of resale to be permitted by general licence now. However I would be prepared to concede to the infant industry considerations to the extent of announcing that this general licence will only be issued once Mercury has got its basic "figure of 8" inter-city network installed provided this was not later than 1987. This would then put Mercury into a position to take advantage of resale at exactly the same time as BT. I believe that investors would see this as expanding Mercury's opportunities to earn a return on its investment, and thus that it would have no adverse impact on the C&W sale.

The statements about new investment obligations to be imposed on Mercury are vague and disquieting. Nor do I think they will be acceptable to C&W. They should not in my view be pursued.

Subject to these comments (and to the drafting point at the end of paragraph 11 above) I would be content with the statement.

Timing

Finally I must stress the urgency in regard to the Cable and Wireless sale. I know you appreciate this and with time to keep the discussions with BT and C&W as short as possible, so that the statement can be issued in time for the market to digest its implications. This means in practice that the statement ought to be made by the end of next week, 18 November, if at all possible.

I am copying this letter to the Prime Minister, Leon Brittain, Geoffrey Howe and Sir Robert Armstrong.

yours sincerely
FP Bogan

for JOHN MOORE
 (Seen by the Minister
 and signed in his
 absence).

Port + Telecom: Future

Pt 7



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NOV 21 1994

Bo



10 DOWNING STREET

From the Private Secretary

7 November, 1983

Dear Calum,

CABLE AND WIRELESS AND BRITISH TELECOM

The Prime Minister has seen your Secretary of State's letter to the Chancellor dated 28 October and the Foreign and Commonwealth Secretary's minute of 4 November. She has noted the proposal that the Chairman/Chief Executive of both Cable and Wireless and British Telecom be a British citizen. She has noted that this could be useful in countering allegations that the management of BT could fall into foreign hands.

I am sending a copy of this letter to John Kerr (HM Treasury), Brian Fall (Foreign and Commonwealth Office), Hugh Taylor (Home Office), David Heyhoe (Lord Privy Seal's Office) and to Richard Hatfield (Cabinet Office).

*Yours sincerely
Andrew Turnbull*

(A. Turnbull)

C. McCarthy, Esq.,
Department of Trade and Industry

Turn

CONFIDENTIAL



10 DOWNING STREET

From the Private Secretary

7 November, 1983

file
R01
cc. Mowl
cc. Hunt
HO
FEO
CO

Dear Cathryn.

FUTURE COMPETITION POLICY IN TELECOMMUNICATIONS

The Prime Minister has seen your Secretary of State's minute of 4 November and the draft statement attached to it. She is content that a statement should be made broadly on these lines, to be released in order to meet the dictates of the timetable for the Cable and Wireless flotation.

She has seen the recommendation that the BT/Mercury duopoly should be limited to five years with a review thereafter. She has commented that five years is a short time given the size of the investment which Mercury is making. She has asked therefore whether seven years could be considered. She attaches great importance to the establishment of Mercury and as a result accepts the judgement your Secretary of State has reached that re-sale should proceed in, "a measured way".

She has also asked that a number of other suggestions be considered. The statement refers to the intention for the new Mercury licence to contain specific obligations about installation of the Mercury network on a national basis. Does it make sense to impose this obligation? Should not the expansion of Mercury depend upon its commercial judgement?

On interconnection, the statement refers to terms and conditions being left to commercial negotiations, with the Director General of OFTEL as a final arbitrator in the case of disagreement. Is there not a danger that BT will use their dominant negotiating position to dictate the terms of interconnection, notwithstanding the role of the Director General? Would there be merit in requiring the Director General to lay down general principles for fair terms and conditions for interconnection? The aim would be to ensure that potential new entrants were not discouraged by the prospect of negotiating with BT.

/Could

CONFIDENTIAL

Could the statement go further in indicating the Government's willingness to ^{consider} specialised network services on a local, regional or national basis? This need not be inconsistent with the duopoly for public switched telephone networks. Finally the statement refers to the radio spectrum as "a limited resource". The statement may be underestimating the scope for allocating radio frequencies and hence the scope for licensing additional regional or national radio networks.

I am sending a copy of this letter to John Kerr (HM Treasury), Hugh Taylor (Home Office), Brian Fall (Foreign and Commonwealth Office) and to Richard Hatfield (Cabinet Office).

*Your sincerely
Andrew Turnbull*

(A. Turnbull)

C. McCarthy, Esq.,
Department of Trade and Industry

PRIME MINISTER

STATEMENT ON FUTURE COMPETITION POLICY IN TELECOMMUNICATIONS

To see Mr. Tebbit's draft statement and his minute explaining his proposals.

To see also Policy Unit's comments.

- (i) Agree to statement broadly on these lines?
- (ii) Agree Mercury duopoly *of* 5 years with review thereafter (an improvement on earlier suggestion of "five years at the earliest")?
- (iii) Agree I put Policy Unit's comments to DTI as suggestions?

*I think 5
years too
short - but
to be
considered.
mt*

Yes but -

My only reservation is over resale which appears to be a question of delicate judgement. Is it better to delay resale, which is in principle desirable, in order to give Mercury a better chance to establish itself? Having gone down the alternative network route, is it not better to see it through? It is difficult to challenge Mr. Tebbit's judgement on this.

*on resale I agree
with your observations
and with the statement.
mt*

AT

Andrew Turnbull

4 November 1983

g/c DP.

MR TURNBULL

4 November 1983

STATEMENT ON FUTURE COMPETITION POLICY IN TELECOMMUNICATIONS

The proposed statement is intended to confirm our commitment to continued liberalisation and to remove uncertainty in the market about our future intentions.

We acknowledge the considerable progress which has already been made in introducing competition into the telecommunications market. We support much of the statement but consider that certain crucial changes are desirable.

The Duopoly

The Government has been criticised for our policy of licensing only Mercury as a provider of an alternative telecommunications network to BT. The statement attempts to strike a balance between a need to protect Mercury in its early years and to broaden the possibilities for competition into all sectors of the telecommunications market. In view of the assurances given to Mercury that additional national networks would not be licensed for the foreseeable future, our policy now should be to define the duration of the duopoly.

X The statement refers to the Government having now decided to make it clear that it will not license other operators during the next five years. The position will then be reviewed. We consider that this is acceptable. Five years is long enough for Mercury to establish itself. The Government should not, however give in to pressure from Mercury's partners to extend the period of the duopoly, beyond five years.

Obligations on Mercury

I think 5 years is too short - to justify the large investment involved - 7m?

The statement refers to the intention for the new Mercury licence to

"contain specific obligations about the installation of the Mercury network on a national basis".

In practice this obligation is meaningless as commercial reality will dictate Mercury's ability to develop and expand. There are already some doubts about Mercury's future business prospects and the best that Government can do is hope and encourage Mercury to take advantage of the protection offered by the duopoly.

X We suggest that the statement should refer only to the intention of removing current restrictions from the Mercury licence. This would give the company scope to develop into a national network, depending upon Mercury's commercial judgement.

Resale

The statement rules out resale of leased BT circuits for five years. We consider that resale should be permitted as soon as possible. This would quickly stimulate competition without requiring investment in network infrastructure. It is also unlikely to affect BT's revenues significantly (perhaps 2% at worst) and it is possible that BT could benefit from resale through increased utilisation of spare capacity.

Resale is unlikely to be damaging to Mercury. On the contrary, the opportunity for improving capacity utilisation in the early years could be an advantage. A general licence for resale will enable the Government to retain control where necessary.

? We suggest that the statement should not close off the possibilities for immediate resale.

Interconnect

The obligation on BT and Mercury to interconnect with other licensed operators is essential for increased competition. The statement refers to terms and conditions being left to commercial negotiations, with the Director General of OFTEL as a final arbitrator in the case of disagreement. There is a strong possibility that BT will use their dominant negotiating position to dictate the terms of interconnect, notwithstanding the role of the Director General.

X We suggest that the statement should invite the Director General of OFTEL to lay down the general principles for fair terms and conditions for interconnect. This will ensure that potential new entrants are not discouraged by the prospect of negotiating with BT.

Competition up to 1988

The statement does not give sufficient attention to the scope for competition up to 1988. The next five years will be important for new technological developments which will stimulate competition and benefit the economy as a whole. There is considerable scope for developing particular market segments.

X We suggest that the statement should refer to our willingness to consider licences for specialised network services on a local, regional or national basis. The criterion would be the application of new technologies to meet an unsatisfied market demand.

This would not be inconsistent with the duopoly for public switched telephone networks and is likely to stimulate interest in satellite technology and radio for data, mobile radio and video services amongst others.

We suggest the current radio reference

X "the radio spectrum is a limited resource, with many competing demands on it... nor would it be practicable, at least for some time to come, to license more than two national telecommunication operators using radio"

should be revised. It is misleading. The scope for allocating radio frequencies is considerable and there are no technical reasons why additional regional or national radio networks could not be licensed. The Merriman Report has for example recommended the allocation of additional frequencies for mobile radio from 1984 onwards.

DLP.

DAVID PASCALL



JH 49

DEC NO
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PRIME MINISTER

COMPETITION POLICY IN TELECOMMUNICATIONS

As requested in your Private Secretary's letter of 31 October, I am circulating the draft of the statement on future competition in telecommunications which Kenneth Baker proposes to make next week in the Standing Committee considering the Telecommunications Bill.

2 The statement is needed to explain what we have so far decided so as to provide a framework to facilitate the flotation of both Cable and Wireless shares later this month and of BT shares next year. We should not underestimate what we have already achieved: complete liberalisation of the supply of terminal apparatus by 1987, the licensing of a second national and international carrier (Mercury), a general licence for Value Added Network Services, the licensing of two national cellular radio networks and the imminent licensing of 12 pilot cable projects. This is a complete transformation of the market for telecommunications and it has taken place in the short period of two years since the British Telecommunications Act became law. The full impact of what we have done will take some time to work through into the market place simply because telecommunications



are complex and the necessary investments take a long time to plan and implement.

3 You will remember that when we decided to license Mercury we decided that there should be no additional national telecommunications networks "for the foreseeable future". There are sound economic reasons for this. Mercury will need to invest around £600m before it establishes itself as an effective independent carrier covering the major population centres of the country. Until that is achieved, companies looking for a secure alternative to BT are likely to refrain from committing major tranches of their traffic to Mercury and the Mercury partners will have very low returns. The Mercury partners need a clear run and settled policy environment so that they can establish their system on a nationwide basis.

4 Our decision to establish Mercury as a second national carrier is an important move; it has not been tried anywhere else in quite the same way. Our objective from the start has been to give telecommunication users a genuine choice of telecommunications network and to ensure that no individual group has a stranglehold over the nation's vital telecommunications links. But ^{it is important that we} in the early days there is a risk that Mercury may fail to establish itself. That is why I am convinced that we must give Mercury an opportunity to develop ^{and establish itself} before we risk licensing additional competition. The BT/Mercury duopoly is, itself, undesirable and I propose that the statement should

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indicate that the duopoly will be reviewed after five years. This announcement would represent a positive advance over the present situation which envisages that there will be no additional network competition "for the foreseeable future". You should, however, be aware that the Chairman of Cable and Wireless has expressed some misgivings about an early ending of the assurances given to Mercury and I shall need to discuss the situation further with him.

5 Mercury's commercial success depends on its ability to attract business from Britain's top 300 companies who together provide around 60 per cent of BT's revenue. Unfortunately, these potential customers are being deterred by the current POEU dispute. Many of the companies would prefer to avoid Mercury provided they could gain some easement of the rules of the use of private leased circuits (tie lines) supplied by BT. Such arrangements, involving what is loosely called "resale", are currently the subject of considerable public debate and it must clearly be our long-term objective to secure the maximum possible relaxation of the restrictions on resale. However, in the short term some forms of resale - in particular "simple resale" where companies sell to third parties capacity on the circuits they lease from BT - could seriously damage Mercury's immediate prospects. Moreover, simple resale, while it would allow competition in the use of the network and would have all the superficial appearances of creating additional networks, would in fact leave users in the hands of BT and its unions, since it is they who provide the leased circuits used by resellers and also share in the revenue.



6 On resale, I am therefore convinced we need to proceed in a measured way. This is also necessary to avoid too abrupt a protective reaction by BT on tariff rebalancing which could lead to big price increases for leased circuit and domestic rentals. It could also lead to BT offering terms to resellers to undercut Mercury in certain important market segments. I propose that we should ease the restrictions on resale as they affect closed user groups, shared use of leased circuits and interconnection between leased circuits and the public switched telecommunications network. If we can secure progress on these three fronts we would provide benefits to business in different parts of the country, whilst not doing the harm which would result from early simple resale. I envisage that we would announce our policy on simple resale at the time of the review of the BT/Mercury duopoly.

7 Finally, I would like to draw attention to a timetable constraint. The prospectus for the Cable and Wireless flotation must be prepared before 22 November and the contents of Kenneth Baker's statement are material to Cable and Wireless's UK activities. Kenneth Baker needs to discuss the contents of the statement with Cable and Wireless, and other Mercury partners and BT urgently before any public release. Before doing so, I think it best to determine our own position and I would be grateful for clearance of the statement by close of play on Tuesday 8 November.

8 I am copying this to the Chancellor of the Exchequer, the



Home Secretary and the Foreign and Commonwealth Secretary, and to
Sir Robert Armstrong.

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N T

4 November 1983

Department of Trade and Industry

DRAFT STATEMENT ON FUTURE COMPETITION POLICY FOR
TELECOMMUNICATIONS

The Government have been pursuing a consistent policy of seeking to introduce competition into the three main sectors of the telecommunications market - the supply of apparatus for connection to networks, the provision of services over networks, and the running of networks themselves. The process has been a gradual one, because we have been determined to avoid market disruption and to give all concerned - BT, its traditional suppliers and new market entrants - adequate opportunity to adjust as we progress to the competitive environment. Much progress has been made and the Government have been considering the strengthening of competition in the future.

So far as apparatus is concerned, we have introduced independent standards - making arrangements under the aegis of the British Standards Institution and an independent approvals system under the new British Approvals Board of Telecommunications. We are drafting the independent and objective standards which apparatus must meet before connection to the networks. This work is expected to be complete in mid-1984. We have recently announced that from the end of this year British Telecom will cease to self-approve the apparatus which it supplies to the market. Like the USA the UK will shortly enjoy a completely independent system of approvals for telecommunication apparatus.

I announced in February the Government's intention to introduce competition into the two remaining significant areas of apparatus supply from which it had hitherto been excluded. I can now confirm that on the appointed day when the Telecommunications Bill enters into force the BT monopoly of supply and maintenance of the prime telephone instrument will end for those customers who have a standard socket fitted by BT. From the end of 1984 customers who do not want sockets will be free to buy the prime instrument from anyone but BT will remain responsible for installing and maintaining such instruments. Maintenance of new call-routing apparatus is being progressively liberalized and will be fully open to competition by 1987.

In short, in the brief period since the British Telecommunications Act came into force in 1981 we have moved from a position of almost complete monopoly of apparatus supply to a position where a completely open and competitive market is in sight.

I turn now to services provided over public telecommunications networks. The convergence of computing and telecommunications technology has created an entirely new market for these Value Added Network Services, or VANS. We have completely liberalized this VANS market. The General Licence for Value Added Network Services granted last October authorized any company which registers with my Department to run telecommunication systems for the purpose of providing such services over public networks. This is the most liberal

VANS regime in the world. The only condition imposed on those who offer VANS is that they must provide a service in addition to the basic telecommunication service of conveying or switching messages. Some 60 VANS projects are now under way and I expect a continuing rapid development of this sector of the market.

Within the network provision we have taken the most far-reaching steps towards competition. The provision of the telecommunications network has traditionally been the preserve of single monopoly operators throughout the world. In the USA, where network competition developed first, many independent operators have, since 1976, started to lease capacity from the dominant suppliers and to resell this capacity to their customers. We therefore naturally considered at the outset of developing our policy whether to permit simple resale of BT circuits here.

We decided, however, on a different course. Instead of licensing simple resale, we encouraged the development of a separate and independent network. Mercury, a consortium of Cable and Wireless, BP and Barclays Merchant Bank, has been licensed to provide every form of telecommunication service, including private leased circuits, switched services to business and domestic premises and the full range of international services. We expect Mercury to develop into a national public telecommunication system and we intend the new licence to be granted to Mercury under the Telecommunications Bill to contain specific obligations about the installation of the Mercury

network on a national basis. Mercury will have a licence very similar to BT's.

The creation of a new network requires very large investment, and over a long period little revenue can be earned.

Mercury therefore needs time to install and consolidate its national network. Similarly, British Telecom also needs time to adjust. Its public telecommunications system was developed as a unitary and integrated network without thought of competition and it needs time to adapt to competition.

Telecommunications can only be provided by means of cables or radio. The installation of cables may have an undesirable effects on the environment and disrupt highway surfaces and traffic. The radio spectrum is a limited resource, with many competing demands on it. It would not be right to license a multiplicity of operators to install overhead wires or to dig up streets, nor would it be practicable, at least for some time to come, to license more than two national telecommunications operators using radio.

Government therefore gave the Mercury partners at the outset an assurance that for the foreseeable future they would not license any additional national networks.

To avoid uncertainty the Government have now decided to make it clear that it will not license operators other than BT plc and Mercury Communications Ltd, during the next five years.

The position will then be reviewed. In the Hull area, BT's role will be carried out by the City of Kingston upon Hull.

3 In addition the Government has already licensed two national cellular radio telephone networks. They will provide increasing alternatives to BT and Mercury at the local level but their role will be limited to providing radio telecommunication services. The Government will shortly be licensing the first broadband cable networks; their operators will be licensed to offer the full range of telecommunication services within their areas but voice telephony services on cable systems will be allowed only if provided in association with BT or Mercury, who will also retain an exclusive role in the provision of data communication services in the City of London, Westminster and Camden and in the business centres of Manchester and Birmingham. The cellular radio companies, the cable operators and other operators, including private mobile radio, will be permitted to connect their systems by means of BT and Mercury only.

4 Arrangements for interconnecting different telecommunication systems are particularly important. The Government intends that subscribers to one telecommunication system should be able to call subscribers to other telecommunications systems. To this end, the draft British Telecom licence published on 25 October contains a precise obligation requiring BT to connect or to permit the connections of its systems to any other system where

the operator of the other system is licensed to connect and requires the connection. A similar obligation will be contained in the Mercury licence. It will be for BT and Mercury to negotiate the technical and commercial terms for the connections both between their two systems and between their systems and other systems. Connection may be on standard published terms but, where there is no agreement between the operators, BT, Mercury and others concerned will be obliged to carry out connections on terms and conditions laid down by the Director General of Telecommunications.

The BT licence leaves open the possibility of the future introduction of various forms of resale or leased circuits, including simple resale. So will the Mercury licence. The Government considers, however, that it would not be right to license simple resale during the next five years.

The Government are, however, anxious to explore the scope for reducing some of the restrictions currently imposed on the use of private circuits leased from BT and Mercury. We are therefore discussing the possibility of allowing closed user groups to share the use of leased circuits, of giving lessees discretion to permit others to use spare capacity on leased circuits and to provide less restricted interconnection facilities between leased circuits and the public switched networks. We also consider that BT and Mercury should have the option of bringing into public use spare capacity which may be available on privately owned networks.

Our liberalization policy aims to increase consumer choice, and

to stimulate both greater efficiency in the use of national resources and encourage growth and innovation. The competitive framework I have outlined will enable those aims to be achieved and will allow BT, Mercury and all the other companies in this rapidly expanding industry every opportunity to prosper through fair competition to the benefit of consumers and their workforces and the economy generally.

Post Office Future #7





cc NO

Prime Minister ⁽²⁾

FCS/83/222

To note proposal that Chairman/
Chief Executive of CW and BT
a British citizen. Useful in warding
off POEU scare stories about
BT falling into foreign hands.

SECRETARY OF STATE FOR TRADE AND INDUSTRY

Cable and Wireless and British Telecom

1. Thank you for sending me a copy of your letter of 28 October to Nigel Lawson.
2. You raised the question of Cable and Wireless. I support the proposal, now put to shareholders, that the Articles of Association of the Company should be changed so as to provide that the Chairman/Chief Executive should be a British citizen. This restriction on grounds of nationality is prima facie in breach of the free movement of workers or freedom of establishment provisions of the EEC Treaty; but we are confident that, if challenged on this, we could defend the measure successfully as justified on grounds of public security (Article 48 or 56 of the Treaty).
3. The same point is relevant to British Telecom. Were we to try to extend the nationality restriction to cover all or a majority of the directors, as is being suggested, there would be a significant risk of such measures being challenged in the European Court of Justice and of the Court finding such a measure disproportionate to the security need identified. Moreover, there would seem to be merit in introducing the same restrictions for British Telecom as for Cable and Wireless.
4. I understand that it is not now proposed to publish the draft Articles of Association for British Telecom for several days. Our officials have already been in touch on the points

raised

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raised in this letter; it might be useful for them to meet to look further into the issues involved.

5. I am copying this minute to the Prime Minister, Nigel Lawson, Leon Brittan, John Biffen and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

4 November 1983

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file No
D. Pascale

10 DOWNING STREET

From the Private Secretary

31 October 1983

BRITISH TELECOM : DRAFT LICENCE

The Prime Minister has noted with interest the draft licence for BT which has just been tabled with Standing Committee A. She has noted that the Government is due to issue a statement on competition policy in telecommunications some time in November. She would be grateful if this could be circulated to colleagues well in advance of its public release as it is bound to raise important issues.

I am copying this letter to John Kerr (H.M. Treasury) and Andrew Hudson (Financial Secretary's Office).

ANDREW TURNBULL

Callum McCarthy, Esq.,
Department of Trade and Industry.

NR

Cops back to Policy Unit



10 DOWNING STREET

Prime Minister ④

BT Draft Licence

You might, at leisure, like to look at some of the issues being raised by the BT privatisation.

I attach

- (i) a note of bullet points which DTI Ministers are using - Flag A
- (ii) a Policy Unit note on key policy issues - Flag B
- (iii) Explanatory notes on the licence - Flag C. (to peruse only).

The next step is for DTI to produce a statement on future competition.

Agree DTI be asked to circulate draft well in advance of release

Yes

AT 28/10

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28 October 1983

MR TURNBULL

c Mr Mount

B

BRITISH TELECOM DRAFT LICENCE

The BT licence, published on Tuesday, has clearly been drafted in a hurry. It is not in a final form and will be modified in the light of the debate which will now take place in public, in Parliament, and also within Government.

The licence covers three main areas:

- A. Obligations to provide a comprehensive telephone service.
- B. Restrictions to prevent future abuse of BT's monopoly/dominant position.
- C. Measures to encourage fair competition.

The most important points to note are as follows.

A. OBLIGATIONS

On the subjects of most public concern, the licence clearly states BT's obligation to provide rural services, public callboxes, emergency services and directory enquiries. There are also satisfactory provisions for the disabled and for maritime services.

The licence permits, but does not oblige, BT to introduce an access charge to other operators who make use of BT's network. The access charge will share the cost of the above loss-making services between BT and its competitors. The details have yet to be established.

Comment

1. The obligations are consistent with the Government's objectives. However, the financing of loss-making rural services gives some cause for concern. There is no definition of rural services and given the inadequate nature of BT's accounts, it is likely to be difficult to identify the financial subsidy required.
2. The access charge principle avoids the Government having to meet directly the costs of uneconomic services which it wishes to be retained. Although there is some difficulty with the principle of charging competitors for loss-making activities which could be unrelated to their business activities, it is possible that BT

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will in practice not implement the charge. If they do, it will be important that fair and appropriate principles for its operation are clearly established. The concept of the access charge is unrelated to the requirement of competitors to pay fair charges for the use of BT's network.

B. RESTRICTIONS

The licence grants various powers to the Director-General of OFTEL.

The licence confirms the RPI-x method of regulation. BT will be required to keep its annual price increases to subscribers for rentals and local calls ^{x%} below the rate of inflation until at least 1989. The details, the value of x and the possibility of including trunk services within the formula have still to be decided.

BT is required to establish separate accounting and reporting arrangements for its apparatus supply business by 1 April 1987, and is prevented from cross-subsidising either the supply or manufacture of apparatus from profits from the network services. BT must also set up a separate subsidiary by 1 July 1986 if it wishes to make telecommunications equipment.

Comment

3. The proposed simple method of regulation, RPI-x, is becoming unnecessarily complicated, mainly because of the inadequate nature of BT's accounts. Any positive value of x will ensure that prices fall in real terms and that downward pressure is exerted on costs. If BT really are unable to provide sufficient information to define a soundly based level of x, a reasonable but essentially subjective figure should be chosen.
4. The case for excluding trunk calls depends upon the establishment of effective competition as the best method of regulation. As there must be some doubt about this in the immediate future, we consider that trunk calls should be included in the formula. The level of x could be correspondingly larger to compensate for the greater potential profits on trunk services.

5. BT have given a public commitment that current prices will not be raised before November 1984, ie before privatisation and the imposition of the regulatory framework. It is then possible that local charges could rise more rapidly than trunk calls as BT eliminate cross-subsidisation between local and trunk services. (Cross-subsidisation will, however, still be allowed for the loss-making rural services.) This seems reasonable, provided that BT do not use the option of rebalancing tariffs to improve unfairly their competitive position on profitable routes. Any increases in local charges will still need to be within the general scope of RPI-x and a large value of x will help to ensure that pressure on costs is maintained through increased efficiency and modern technology.
6. The licence does not require BT to provide separate accounting systems for local, trunk and international services. The difficulty of introducing such systems was one of the main reasons why the proposal for splitting BT up into separate regional companies was dropped. However, it is difficult to see how the Director-General of OFTEL can come to firm conclusions on the access charge, on anti-competitive cross-subsidisation, and on regulation without separate accounts, even though the licence places on BT an obligation to provide the Director with any information he may reasonably require. Mercury have already expressed concern about the potential for future predatory pricing by BT.
7. We consider, therefore, that further consideration should be given to the question of separate accounts for local, trunk and international services within a reasonable period being a condition of the licence. If this is really not practical, it is important that the obligation on BT to provide the Director with information also extends to BT being required to be in a position to provide such information.
8. We doubt that BT need until 1987 to establish separate account and reporting arrangements for its apparatus supply division.

C. FAIR COMPETITION

As well as clauses on fair competition for the supply of equipment, the main condition for furthering liberalisation in telecommunication services places an obligation on BT to interconnect with

other licensed systems such as Mercury and the cellular radio networks. The Director-General of OFTEL will arbitrate if the parties cannot agree terms and conditions.

Comment

9. This condition has already been attacked by Sir George Jefferson, but is essential for increased competition in the telecommunications market. The problem is not, as Sir George states, that interconnect could be damaging to BT's finances, but that liberalisation will be stifled if BT are allowed to exercise their dominant position in setting terms and conditions. It is important that a principle of fair terms and conditions for interconnect is clearly stated in the licence.
10. However, interconnect is a necessary but not sufficient condition for greater competition. The deciding factor will be the granting of licences to alternative telecommunication systems which could then interconnect with BT. Licences have so far been issued only to Mercury and to two cellular radio networks. The Government has made it clear that no further licences will be granted in the foreseeable future.
11. The Government's future policy on competition and licensing will be essential to the development of a liberalised and efficient telecommunications market in the UK. Competition will also be the most effective form of regulation. The DTI are currently preparing a statement on the Government's future competition policy in telecommunications for issue in November. We consider that this statement should be circulated to the Prime Minister well in advance of its proposed public release. This would give the Policy Unit the opportunity to comment on the important issues which will be covered in the statement. These include the scope for additional competition, the duration of the licensed BT and Mercury duopoly, and the possibilities for resale of leased BT circuits.
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DLP

DAVID PASCALL



cc NO

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Secretary of State for Trade and Industry

28 October 1983

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NBPM

AT 28/10

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

D. Nigel.

CABLE AND WIRELESS

I welcome the plan described in your minute to the Prime Minister of 25 October to reduce the Government's shareholding in Cable and Wireless. It does, however, create one problem for me in connection with the Telecommunications Bill.

2 The British Telecom unions are currently mounting a campaign about the national security implications of privatization and they appear to have generated genuine concern about the control of the national telecommunications infrastructure falling into foreign hands. Kenneth Baker, who is under strong pressure in Standing Committee to publish the draft British Telecom Memorandum and articles in the next few days, considers that these should contain a provision requiring all the BT Directors to be United Kingdom nationals.

3 Similar arguments apply to Cable and Wireless. The company is the licensee of Mercury, the second national telecommunications network, and our critics will almost certainly expect the Cable and Wireless articles to contain some comparable protection for national security. The risk of public comment is increased by the fact that the Memorandum and Articles of the two companies will both be published within a week or so of each other. I would expect us to face embarrassing questions, to which there would be no satisfactory reply, if Cable and Wireless Articles contain no provision requiring at least some of the Directors to be UK nationals.



4 Ideally I would prefer the Cable and Wireless Articles to provide for a majority of the Directors to be UK nationals. I see, however, that Leon Brittan would be content for only the Chairman or the Chief Executive to be a UK national. I also would be content with this as a fallback. I hope that you can agree his proposal.

5 Copies of this letter go to the Prime Minister, Geoffrey Howe, Leon Brittan, John Biffen and Sir Robert Armstrong.

Norman
Tebbit

NORMAN TEBBIT

Edson Bot - Privatization # 8.



20 JUL 1985

Cable and Wireless PLC

3.56 pm

The Financial Secretary to the Treasury (Mr. John Moore): With permission, Mr. Speaker, I will make a statement.

As part of their continuing programme of privatisation, the Government are now considering disposal of a further tranche of their shareholding in Cable and Wireless plc during the current financial year.

The Government renounced control over the company in October 1981 following the sale to the public of some 133 million shares. The Government's shareholding has since been diluted to some 45 per cent. of the company's issued equity as a result of an issue of new shares by the company in March 1983.

The Government have in mind a sale of approximately half their present shareholding through an offer for sale to the public. The precise timing and amount will be subject to market conditions. Parliamentary approval for the expenditure will be sought in a new Vote which will be presented to the House in due course. Pending that approval, the necessary costs of preparation for the sale will be met by repayable advances from the Contingencies Fund.

The directors of Cable and Wireless are recommending shareholders to agree to the issue to the Government of a special share which will enable the Government, irrespective of their own shareholding, to ensure the continuance of those provisions of the company's articles of association that limit the shareholdings of individuals and parties acting in concert to not more than 15 per cent. of the issued ordinary share capital. The Government will vote their shareholding in favour of this proposition.

Mr. Peter Shore (Bethnal Green and Stepney): This is yet another sorry episode in the unfolding saga of public asset stripping which the Opposition call privatisation, and the use of the public capital so released solely to meet revenue requirements. A number of questions arise from this brief and inadequate statement.

Just how much money are the Government attempting to raise by the sale of this further tranche of shares? What method of share disposal will the Minister adopt to prevent a repetition of the disgusting profit making that we witnessed the last time the major tranche of shares was sold? Will he tell us what loss of income and profit the Government have already experienced on an annual basis as a result of the disposal already of about 70 per cent. of this remarkably successful and profit-earning public enterprise which they started to demolish about two and a half years ago?

What measures does the Financial Secretary propose to take to prevent this valuable, dynamic and to some extent strategic asset from falling into foreign ownership and control? What percentage of the shares are already in foreign control and how does this special share to which the statement refers guarantee against foreign ownership as distinct from the ownership by a single firm or enterprise of more than 15 per cent.? The last major statement was from the Minister for Information Technology, who is sitting next to the Financial Secretary. The Minister then told us that it was perfectly all right to sell up to half the shares because it would still leave the

Government the overwhelmingly major shareholder. That will not be the case now—far from it. The Minister told us:

"As for foreign shareholdings, there are provisions in the articles of association that are of some value, but I shall consider that matter again."—[*Official Report*, 9 March 1981; Vol. 1000, c. 624.]

What consideration has been given to this matter? What guarantees can the Financial Secretary give that this major British asset will not be lost not only to the public Exchequer but to British national ownership?

Mr. Moore: It is unfortunate that the right hon. Gentleman allowed his words to ignore the reality in describing what is an outstandingly successful company before and more especially since privatisation. It might have been suitable to have started his remarks with some reference to the employees, to the company and to their success in the market places of the world. The right hon. Gentleman might have wanted to draw the attention of the House to the fact that since the company was privatised its turnover has increased by 38 per cent. and its profits have increased two and a half times. The nation will benefit by the inordinate additional tax revenue from the increase of profits. I shall be pleased to give additional details later. The profits after tax have gone up from £35.5 million in 1979 to £108.3 million in 1983. In the 1983 fiscal year, which ends in March, the Exchequer has gained £48.4 million. In the fiscal year ending in spring 1982 the Exchequer gained £37.5 million. I shall give him the additional figures of the benefits to the nation of this successful company.

I am somewhat bemused by the right hon. Gentleman's question about the capital requirement. He should be reminded of the statement of his right hon. Friend the Member for Leeds, East (Mr. Healey) on 15 December 1976 when, in relation to the sale of BP shares and the usage of the money, he said:

"There is one further step which we propose to take to reduce the public sector borrowing requirement in 1977-78."—[*Official Report*, 15 December 1976; Vol. 922, c. 1532.]

In the debate on the Budget statement the right hon. Member for Leeds, East said:

"This sale will go ahead in 1977-78, and in framing my Budget proposals I have made full use of the room for manoeuvre which it will give me."—[*Official Report*, 29 March 1977; Vol. 929, c. 262.]

From where does the right hon. Member for Bethnal Green and Stepney expect the Exchequer to receive money? I assume it is from increased taxes or increased borrowing, as opposed the actions that his right hon. Friend took when in Government.

The right hon. Gentleman also referred to the protections in relation to foreign ownership. It might interest the House to know that already 80 per cent. of the company's employees are foreigners. When the offer for sale originally took place, foreigners purchased shares.

The right hon. Member for Bethnal Green and Stepney asked about control. The controlling mechanisms to which my hon. Friend the Minister for Information Technology referred in September 1981 in relation the nature of the company's articles of association will be replaced, providing of course the special share is approved. That will give exactly the same protection. If it will be of use to the right hon. Gentleman, I shall be happy to remind him of those protections.

The company has benefited and grown from its opportunities to be free from, as my hon. Friend the

[Mr. Moore]

Minister for Information Technology somewhat unfelicitously described it, the dead hand of the Treasury. In my present role I am not sure that I can subscribe completely to that remark.

Mr. Shore: Will the Financial Secretary answer my first and most important question? How much money is he seeking to raise in the further asset-stripping of this important enterprise? Secondly, will he make plain what is precisely the protection against foreign domination and ownership as a result of the further disposal of so large a number of shares?

Mr. Moore: On the amount of money, I cannot of course be specific even about the target because it would depend on the price of the sale at the time.

I also neglected to answer the right hon. Gentleman's question about the method of sale. The method of sale has not been decided at the moment. I remind the right hon. Gentleman of the recent success of the tender method in the BP sale. I remind him of what the existing articles provide:

"Apart from Her Majesty's Government, no individual shareholder or group acting in concert may own or control more than 15 per cent. of the votes exercisable at general meetings of the company. The directors have power to require the owners' holdings that contravene the Article to sell the excess shares, or to sell such shares themselves on behalf of the owners."

Should the special meeting approve the recommendations of the shareholders including the shares of the Government, the special share, if then approved, will confer, irrespective of the Government's shareholdings, precisely the powers that protect from foreign control and changes in the articles of association.

Mr. Tim Renton (Mid-Sussex): Is it not only since privatisation that Cable and Wireless has changed from a slightly sleepy giant into just the type of dynamic enterprise about which the right hon. Member for Bethnal Green and Stepney (Mr. Shore) waxes so eloquently? Should not the success of the National Freight Corporation and Cable and Wireless since privatisation encourage employees in other nationalised industries such as British Telecom to seek similar freedoms for their own enterprises?

Mr. Moore: I could not endorse more my hon. Friend's remarks. It is especially interesting that since privatisation there has been no indication from the trade unions representing the employees of this now successful privatised company that they find relationships difficult. That is not surprising because most of the employees, happily, are now shareholders.

Mr. Richard Wainwright (Colne Valley): Is it not a failure of stewardship by the Government that they should become committed to this sale of a public asset before the end of the year regardless of what may happen to values in a rather volatile market? Will the Financial Secretary explain why this sale should be precipitated by unexpected delays in privatising entirely different corporations?

Mr. Moore: The hon. Gentleman is drawing a series of completely incorrect conclusions. I am sorry that he cannot endorse the opportunities for people in the wider market place. I am sorry that he cannot see the opportunities within privatisation for the employees, let alone for consumers. No indication was given that this was

a precipitate sale. It is part of the Government's programme of privatisation. It is part of the process that is producing successful companies such as Cable and Wireless. I would not deny its previous success, but it might have been useful for the Opposition to mention its ability to grow even faster when privatised and to secure orders for its suppliers—critical suppliers such as STC, GEC, Racal, Plessey and Taylor Woodrow, companies which revel in the orders that a more successful British company can produce.

Mr. Michael Grylls (Surrey, North-West): As experience shows that generally — indeed, almost without exception — the Government ownership of industries has done those industries nothing but harm, should that not encourage us to speed up allowing many of the remaining nationalised industries to have the advantage of private capital, rather than depending on the Government?

Mr. Moore: I look forward to the continued support of my hon. Friend and all my hon. Friends in the opportunities that can be given to growing British industries when they are able to tap the private market place and unleash the talents of all managements and employees through our privatisation programme.

Mrs. M. Beckett (Derby, South): In view of the housewifely exhortations to which the Prime Minister regularly treats the House and the country, will the Minister, despite his previous remarks, tell us in all candour what he would think of a housewife who continually, over a period of years, sold the family assets to finance the housekeeping budget? Will he reassure the House that the Treasury has some idea of how it will keep the finances of the country going when it has ceased having anything left to sell?

Mr. Moore: I do not share the hon. Lady's deprecating attitude towards housewives in our country, and I find it peculiarly sexist. I should have thought that a nation which had shown, by the unleashing of the energies of employees — not simply in companies like Cable and Wireless but, for example, in the National Freight Corporation — that increased opportunities for wealth can be so created, that would be welcomed by all. It would be extremely pleasant to hear somebody from the Opposition Benches suggest that the employees in this company who have benefited from the success are to be commended.

Mr. Barry Henderson (Fife, North-East): As my hon. Friend does not like the expression "dead hand of the Treasury", will he confirm that Cable and Wireless will now be released from the constraints of the public sector borrowing requirement, which might have resulted in the company not being able to invest as much as it could, and perhaps should, in its role as a major company exporting British products?

Mr. Moore: I should have said that I was not so much concerned with the dead hand of the Treasury; I was being somewhat particular and personal. I meant the dead hand of the nature of bureaucracy on the private enterprise spirit of a corporation. The company has been freed from that control since privatisation in September 1981. That, we believe, is a significant feature of the way in which it has exploded in terms of its turnover and profit.

Mr. Harry Ewing (Falkirk, East): Will the Minister accept that, although he quoted the articles, they refer only

to group in concert and that it is entirely possible for the control of Cable and Wireless to pass into foreign hands? Will he explain why, if Cable and Wireless is now so profitable, to use his words, and is providing an increasing and continuing income to the Treasury, he should be so insistent on selling off an asset that is providing such a continuing income to the Treasury?

May I press the hon. Gentleman about the Department of Industry team of civil servants who have been in Japan of late? We have an internal document to prove that a team from that Department has been in Japan trawling the Japanese money markets to encourage them to buy British Telecom when BT is privatised in October of next year. May we have an assurance that that team has not been trawling the Japanese money markets in order to buy the shares in Cable and Wireless which the Minister is about to float?

Mr. Moore: The Minister for Information and Technology is present and does not signify that he understood the hon. Gentleman's last remarks, but I shall try to pursue the matter. The first point he raised related to the control powers under the special share. That has not changed the nature of the protection that is already in existence; the proposal would maintain the same powers, which are regarded as sufficient by the Government.

On the question about the sale of further shares, I should have thought that it was up to the Opposition to show why the state should continue to own a minority percentage in a company of this kind without needing additional control powers. I should have thought that the Opposition would like to see the money released so that, for example, we might be better able to pay for services such as the National Health Service.

Mr. Tim Smith (Beaconsfield): Is it not the case that all those associated with Cable and Wireless—not just the shareholders but the employees, creditors and customers—have benefited from the excellent performance to which my hon. Friend referred, so making his further statement very welcome indeed?

Mr. Moore: Absolutely. All of the 10,600 employees of the company merit our attention, not just the 1,500 employees in the United Kingdom. It is to their benefit and to the benefit of the consumer that I hope we shall address our remarks. I have sought to do so.

Mr. Ian Wrigglesworth (Stockton, South): As one who saw the operation of Cable and Wireless from inside the Post Office and subsequently since privatisation, I join the Minister in paying tribute to the work which that company and its staff have done.

Will the hon. Gentleman explain the Government's motives more fully? As it is clear that the measure which he has announced today will not increase competition in the telecommunications industry and as it will not any further remove the dead hand of the Treasury—because privatisation has already taken place—what is the true motive of the Government in selling more of the excellent investment in this stock? Is it not selling the silver to pay the household bills, as the hon. Member for Derby, South (Mrs. Beckett) said? If this money is to be raised by the Government, will the Minister give an assurance that it will be further invested in capital assets of the sort that are now being employed in Cable and Wireless?

Mr. Moore: I know that the hon. Gentleman means well, but he is obviously a long way from office. One day—I pray never, but one never knows—he may have to face the reality of having to finance—

Dr. David Owen (Plymouth, Devonport): Answer the question.

Mr. Moore: I will endeavour to answer the question if those slouching below the Gangway on the Opposition Benches will be patient.

The hon. Member for Stockton, South (Mr. Wrigglesworth) may then want to consider that, while Government must spend money, they must also raise it, and the inevitable choices are between printing, borrowing and taxing. I should have thought that he would want to see a successful and free society, as opposed to the right hon. Member for Plymouth, Devonport (Dr. Owen), who mouths nonsensical phrases he learnt as a Socialist, such as "asset stripping". In creating for the employees and customers a vibrant and exciting new company, the hon. Gentleman should want us to give the public an opportunity to own even more shares in such an institution. I would have hoped that in his new-found freedom from Socialism, if that is what it was, the right hon. Member for Devonport might have joined us in this, but obviously he has not.

Mr. John Carlisle (Luton, North): In the past in such sales the Government have always attached great importance to the wish of employees to own shares in their company. What provision is the Minister making in this sale for that to happen?

Mr. Moore: As I said initially, the methods of sale have not yet been arrived at in detail.

Mr. Tim Rathbone (Lewes): Will my hon. Friend explain, in view of the protections to which he referred, why the Government are not planning to sell all their holding?

Mr. Moore: The Government must concern themselves, when it comes to the time, with the market place, the necessary needs of other aspects of the market place, the needs of their overall funding programme, the needs of the company and the position of the company. The Government will be taking all those aspects into account when it comes to the precise amount of the sale.

Mr. Tim Eggar (Enfield, North): In view of the obvious success of the denationalisation programmes of the previous and present Government, will my hon. Friend confirm once and for all and categorically that the Government will give top and overriding priority to further denationalisation measures of companies that at present are wholly owned by the State and will give top priority to selling off minority stakes in existing companies?

Mr. Moore: I can absolutely and unequivocally confirm to my hon. Friend that we shall continue to identify and prepare other potential candidates for privatisation, as this is clearly a key plank in the Government's programme of allowing competition to flow in our country and giving opportunities to the consumer. Obviously we shall continue to follow that programme.

Mr. Shore: This company has obviously been a major success as a public enterprise and it continues to be successful under its present private arrangement.

[Mr. Shore]

Surely the Minister can answer two specific points. First, he attaches great importance to employee involvement. What percentage of the present private ownership of Cable and Wireless is owned by the employees? Secondly, he must be able to give, if only for public sector borrowing requirement purposes, a broad order of magnitude of the sum of money which he intends to raise. If he cannot give that, there is no possible means by which the House can judge whether this is a sensible arrangement, even in the Government's own terms.

Mr. Moore: I cannot answer the right hon. Gentleman's first question specifically because the share position changes regularly, but I shall ensure that he has the figure. I could, of course, give a figure. I assumed that those who participate in these debates would be aware of the current price per share, which is 260p. If the Government were looking to sell up to half of their current 45 per cent. holding, and if we were to assume that there would be about 100 million shares, we would be talking about £260 million in gross proceeds. I reiterate that the specific size and the timing of the operation will depend on market conditions.

Times Newspapers

4.20 pm

Mr. Ian Wigglesworth (Stockton, South): I beg to ask leave to move the Adjournment of the House, under Standing Order No. 10, for the purpose of discussing a specific and important matter that should have urgent consideration, namely, "new information concerning the Government's and the House's decision in 1980-81 regarding the acquisition of Times Newspapers by Mr. Rupert Murdoch."

In January 1981 the House debated the takeover of Times Newspapers by Mr. Rupert Murdoch. Despite opposition from both sides of the House, the House agreed to accept the then Secretary of State's recommendations that the takeover should be allowed and that the matter should not be referred to the Monopolies and Mergers Commission. It did so because of the alleged financial position of the newspapers at that time and because of eight conditions that were given to the House and attached to the consent by the Secretary of State.

The former editor of *The Sunday Times* and *The Times* has alleged today that the then Secretary of State grossly misled the House in 1981 in that the financial position of the newspapers was not as he stated and, therefore, that the matter should not have been exempted from reference to the Monopolies and Mergers Commission as required under the Fair Trading Act 1973. Secondly, he has alleged that the undertakings that were given to the House in 1981 by the then Secretary of State have been broken.

If these allegations are true, the House is being treated with utter contempt by Mr. Rupert Murdoch and his company. The then Secretary of State, who is now the Leader of the House, is the person to whom we look to protect the interests of this place. He is a fair man in the House and he is known for his honourable action in this and many other matters. Surely he should have an opportunity to say whether he was misled in 1981 and whether the House should take action to ensure that the undertakings that were then given are being carried out.

The House is the guardian of the public interest, especially in respect of newspaper power. I hope that you will think it appropriate, Mr. Speaker, that an early Adjournment debate should be held to provide an opportunity for the Government to say what they feel about the allegations that have been made and their actions in 1981, and to provide the House with an opportunity of casting comment and judgment upon the undertakings that were given by Mr. Rupert Murdoch, which apparently have been broken.

Mr. Speaker: The hon. Member for Stockton, South (Mr. Wigglesworth) asks leave to move the Adjournment of the House for the purpose of discussing a specific and important matter that he thinks should have urgent consideration, namely,

"new information concerning the Government's and the House's decision in 1980-81 regarding the acquisition of Times Newspapers by Mr. Rupert Murdoch."

The hon. Gentleman will have heard what the Leader of the House said during business questions this afternoon. I have listened carefully to what the hon. Gentleman said and I regret to say that I do not consider the issue that he has raised as appropriate for discussion under Standing Order No. 10. Therefore, I cannot submit his application to the House.

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10 DOWNING STREET

From the Private Secretary

27 October, 1983

Cable and Wireless Share Sale

The Prime Minister has seen the Chancellor's minute of 25 October recommending the sale of a further tranche of Cable and Wireless shares. She is also content that this should be announced today in an Oral Statement along the lines of the draft suggested.

I am copying this letter to Brian Fall (Foreign and Commonwealth Office), David Heyhoe (Lord Privy Seal's Office) and Callum McCarthy (Department of Trade and Industry).

ANDREW TURNBULL

John Kerr, Esq.,
H.M. Treasury

SECRET

CABLE AND WIRELESS

1. With permission, Mr Speaker, I will make a Statement.
2. As part of its continuing programme of privatisation, the Government is now considering disposal of a further tranche of its shareholding in Cable and Wireless plc during the current financial year.
3. The Government renounced control over the Company in October 1981 following the sale to the public of some 133 million shares. The Government's shareholding has since been diluted to some 45 per cent of the Company's issued equity as a result of an issue of new shares by the Company in March 1983.
4. The Government has in mind a sale of approximately half its present shareholding through an offer for sale to the public. The precise timing and amount will be subject to market conditions. Parliamentary approval for the expenditure will be sought in a new Vote which will be presented to the House in due course. Pending that approval, the necessary costs of preparation for the sale will be met by repayable advances from the Contingencies Fund.
5. The Directors of Cable and Wireless are recommending shareholders to agree to the issue to the Government of a Special Share which will enable the Government, irrespective of its own shareholding, to ensure the continuance of those provisions of the Company's Articles of Association that ..

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limit the shareholdings of individuals and parties acting in concert to not more than 15 per cent of the issued Ordinary share capital. The Government will vote its shareholding in favour of this proposition.

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PS/ Secretary of State for Trade and Industry

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET

TELEPHONE DIRECT LINE 01-215 5422
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27 October 1983

Andrew Turnbull Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Dear Andrew,

BT LICENCE

You asked on the phone for some background information on the BT Licence. I attach some background explanatory notes which highlight the main points in the Licence document, which, as you know, is both long and intricate. I also attach a short note of "bull points", prepared for Ministers' use in the Committee Stage of the Bill which may be of use to you.

2 Do let us know if there is anything else you need.

Yours sincerely,

Ruth Thompson

RUTH THOMPSON
Private Secretary

Encls

DRAFT LICENCE FOR BRITISH TELECOMMUNICATIONS

EXPLANATORY NOTES

INTRODUCTION

1 The attached document is the draft of the Licence to be granted to British Telecommunications ("British Telecom") when the Telecommunications Bill becomes law in about July 1984. The draft Licence has been the subject of lengthy discussions with British Telecom and sets out the Government's firm proposals. The draft is not, however, the final text of the Licence because:

- (a) Parliament may amend the Telecommunications Bill before it becomes law and, since the Secretary of State must do what the law says he may need to change the text of the draft Licence to carry out Parliament's wishes;
- (b) the Licence itself deals with complicated legal, technological and commercial issues some of which require further consideration with interested parties. These are indicated later in these notes and in footnotes to the Licence; and
- (c) the Government wishes to hear the views of those who will be affected by the Licence (including consumers, those who work in British Telecom, the telecommunications manufacturing and service industries and members of the public) and may decide to make changes to the draft Licence to take account of the views which are expressed.

PART 1: THE LICENCE

2 Part 1 is the heart of the Licence and links all the later Parts of the Licence together. Paragraph 1 gives British Telecom permission to run the telecom systems which are described in Schedule 1, and to connect to other telecom systems and to provide the telecom services specified in Part 4. But when it does these things British Telecom must abide by the Conditions or rules set out in Part 2 and the permission can be revoked, or taken away, in the (unlikely) circumstances described in Part 3. Paragraph 2 allows British Telecom to benefit from the provisions of the Telecommunications Code (contained in Schedule 2 to the

Telecommunications Bill) so that it can install all the telegraph poles, wires, underground cables and so on which are needed to link telephones and other telecom apparatus to each other. Paragraph 3 says that the Licence will last for at least 25 years and will go on for longer unless ten years notice of termination is given. The long period of notice is needed so that fears that the Licence might not be renewed will not prevent British Telecom from raising the capital to invest in expensive new plant and equipment.

PART 2: CONDITIONS

Introduction

3 Part 2 sets out the conditions which British Telecom must observe when it does the things permitted under paragraph 1 of Part 1. The conditions or rules are needed because the Bill tells the Secretary of State that he must do certain things when he grants a licence. In particular Clause 3 of the Bill places the Secretary of State under a duty, every time he grants a licence to act in the way which he thinks best calculated to achieve a number of objectives:

- first he must so far as practicable ensure that everyone who wants a telecom service in reasonable circumstances can obtain service and he must pay special regard to those wanting emergency services, public call box services, maritime services and services in rural areas;
- second, he must ensure that those like British Telecom who provide telecom services are able to finance the provision of those services.

These objectives are the most important ones. Once the Secretary of State has taken account of them, he must then act in the way best calculated to meet further objectives:

- he must promote the interests of those who use telecom services or who use telecom apparatus (especially the disabled) in obtaining a variety of good quality services and apparatus at reasonable prices;
- he must maintain and promote competition so that telecom users obtain a choice of services and apparatus;
- he must promote efficiency and economy;
- he must promote research and development and the use of new techniques;
- he must enable British firms to establish and maintain a leading role in telecommunications, encourage major

users of telecoms to set up business in the UK, promote the provision of international transit services here and promote activities by British firms in overseas markets.

4 British Telecom will be made to comply with these conditions by the new Director General of Telecommunications (who is called "the Director" in the Licence) using the powers in Clause 16 of the Bill. Where the Director considers that a breach of a Licence condition has occurred, he may issue an order requiring British Telecom to take such steps as he considers necessary to comply with the condition. Such orders are enforceable by civil proceedings in the Courts.

5 The Director may modify licence conditions Licence conditions. This can happen in two ways. First, if the Director and British Telecom agree that a change to a Licence condition is needed or that a new condition is needed, and the Director gives public notice of his intentions and then considers public comments about it, a Licence condition can be modified by agreement under Clause 12. Second, where there is no agreement between the Director and British Telecom but the Director thinks that a licence condition needs adding or changing, the Director may refer the matter to the Monopolies and Mergers Commission (MMC). If the MMC considers that a modification would be in the public interest, then the Director may, under Clause 15, modify the Licence to put matters right.

6 The Secretary of State's responsibility is limited to granting the initial licence and the initial Licence conditions. Once the conditions are set he has no power to initiate changes to them and only limited powers under Clauses 12 and 15 to prevent modifications. The Secretary of State sets the conditions of licences using the powers in Clause 7(4) and he must include conditions of the kinds described in Clause 8(1).

Section 1 of Part 2

7 Part 2 is divided into two sections. This is because Clause 8(1) of the Bill lays down the kinds of conditions which must be included in licences before British Telecom or any other licensee can be designated as a "public telecommunications operator" under Clause 9 or before the Telecommunications Code can be applied to them under Clause 10(2) (a).

8 All the Conditions in Sections 1 of Part 2 - ie conditions 1 to 17 - are set by reference to Clause 8(1). They impose a series of obligations on British Telecom specifying the services it must provide and how it must

provide them. Section 2 sets out the other conditions which the Government think necessary to implement Clause 3 and the other provisions of the Bill. The obligations in both Part 1 and Part 2 are subject to the limitations and interpretations in conditions 42 to 44, which explain when the Government thinks it impracticable to provide services and when demands for service would not be reasonable.

9 Condition 1 obliges British Telecom to continue to provide a universal telecom service; it must provide both voice telephony services and other services like telex throughout the licensed area (ie all the United Kingdom except Hull) to the extent that it is practicable to do so and there is a reasonable demand for the service. The condition says that British Telecom must convey "messages", which means that BT is obliged to install and maintain networks of wires, cables and radio links, telephone exchanges etc and to connect them to individual premises on request so that "messages" (eg telephone conversations or data signals) can be conveyed from one set of premises to another. British Telecom must also maintain the networks in good running order so that messages are actually conveyed.

10 Condition 2 is very similar to condition 1 but applies the universal obligation to provide voice telephony and other services to rural areas. This puts beyond any doubt the continued provision of satisfactory telecommunication services to rural areas. Condition 19 deals with the financing of loss-making services in rural areas. British Telecom's universal service obligations under both conditions 1 and 2 do not apply in any area where the Director is satisfied that reasonable demands for telecom services are being met by others and that it would not be reasonable for British Telecom to be under an obligation in that area.

11 Condition 3 obliges British Telecom to provide directory enquiry services, that is telephone numbers over the telephone, to assist people who have telephones connected to the British Telecom systems in making calls. But British Telecom will not be obliged to provide the number of a person who has asked to be "ex-directory".

12 Condition 4 obliges British Telecom in appropriate circumstances to install and maintain telecom apparatus which is not part of its networks (apparatus which is included in its networks is covered by Conditions 1 and 2). The obligation in Conditions 1 and 2 is to convey messages by means of the Applicable Systems but Schedule 1 makes clear the these end at the sockets or block terminals where telephones and other apparatus are connected. Telephones, private exchanges etc connected to such sockets or terminals do not form part of the British Telecom networks. Condition

4 obliges British Telecom to install apparatus in customers' premises and then to maintain it except for example where the apparatus is beyond repair.

13 Condition 5 obliges British Telecom to connect its network to networks in overseas countries and also in territories like the Channel Islands and to provide international telecommunication services. This obligation reflects British Telecom's position as the United Kingdom's prime international carrier.

14 Condition 6 obliges British Telecom to provide "public emergency call services", commonly known as the 999 services. Under this condition British Telecom must provide these services at all places throughout the licensed area where people have access to its network; whenever anyone picks up a normal working telephone then that person must also be able to make a 999 call from that telephone. Police, Ambulance, Fire and Coastguard are the emergency organisations most frequently used but this condition also requires BT to provide emergency services to others where the need is identified. There needs to be some flexibility in how the emergency services are to be provided because the licence will run for at least 25 years. In that time there will be both technological and organisational changes which may make it desirable to alter the way the 999 service is provided. However, paragraph 6.3 prevents British Telecom restricting any emergency services it provides unless this is agreed by the authority responsible for the emergency organisation (or by the Director).

15 Conditions 7 to 10 require British Telecom to continue to provide other emergency services and to formulate such plans and arrangements for emergencies as may be required by the appropriate authorities. Such services and requirements will include calls made by the emergency organisations (condition 7) maritime services such as the Distress Watch Service (condition 8), special arrangements in the event of major accidents and plans to facilitate essential national communications in the event of damage to the network from whatever cause (condition 9) and fault repair arrangements for essential services (condition 10). British Telecom will be entitled, where this is appropriate, to recover the costs of such services, plans and arrangements.

16 Condition 11 obliges British Telecom to provide public call boxes. In large part the condition follows the existing agreement between British Telecom and the Post Office Users' National Council (POUNC) governing the removal of call boxes. But a major difference is that whereas the present agreement has been only voluntary, condition 11 imposes obligations on British Telecom (which the Director has powers to enforce under Clause 16 of the Bill). Because

of the concern expressed by many about the future of public call boxes these notes explain condition 11 in some detail.

17 Paragraph 11.1 contains the general obligation on BT to provide services at all call boxes in existence when the licence enters into force and those subsequently installed. 11.2, 11.3 and 11.4 govern the removal of call box facilities. 11.5 and 11.6 contain obligations to publish guidelines about the installation of new public call boxes.

18 Paragraph 11.2 sets out the circumstances in which BT may withdraw a call box; 11.2(a) allows withdrawal, provided the procedures set out in 11.3 are followed, where the provision is "impracticable", for example where the wayleave for the siting of a call box is withdrawn or a road is widened. 11.2(b) is based on the existing arrangements whereby British Telecom and POUNC agree a guideline for a call box's annual takings. 11.2(b) continues this practice but the minimum figure is to be agreed by the Director. No call box can be removed if its annual revenue (which includes an allowance for credit card calls, transfer charge calls etc) is above the minimum figure (unless of course any of the other circumstances covered in 11.2 apply) and before any such removal the procedures set out in 11.4 must be followed. However, if the annual revenue is below the minimum figure it is open to others eg, the local authority in the area, to make it up to the minimum figure, and 11.2(b) provides that if this happens the call box must stay.

19 Paragraph 11.2(c) allows, for example, the withdrawal of one call box in a "bank" of several boxes if their use declines but provides that one must remain nearby so there is no question of complete withdrawal of call box services. Paragraph 11.2(d) is similar and allows removal provided that there is another box nearby but it also allows for a temporary cessation of service to the extent the Director agrees. This might happen for example when a road is widened to remove a corner on which a box is sited and BT proposes to re-site the box.

20 Paragraph 11.2(e) allows for change in the way that call box services are provided but as in paragraphs 11.2(c) and (d) the actual services must continue to be provided nearby. The term "public call box" does not cover all "pay phones" normally found in pubs, cafes, clubs, airports etc. In many cases, although the public have access to these, they are in fact run not by British Telecom but by the publican, cafe owner etc, who normally pays a rent for the box and agrees the cost of calls made from it, and then keeps the coins put into it. However in terms of convenience to the public there is often little difference between the two except that in some cases pay phones are subject to opening hours.

Paragraph 11.2(e) allows for rented or private pay phones to replace public call boxes but this can only be done if there is a contract agreed between British Telecom and the provider of the pay phone and this contract must allow 24 hour access unless the Director agrees otherwise. The onus will be on British Telecom to ensure compliance with the conditions of such a contract.

21 Paragraph 11.3 sets out the procedure to be followed where British Telecom wishes to withdraw a public call box on the grounds that its provision is impracticable. British Telecom must try to install another public call box nearby, but if it cannot, it must inform the local authority and consumer bodies in the area about its proposed removal. These bodies may make representations to the Director who may oblige BT to install a replacement public call box nearby if he decides this is appropriate.

22 Paragraph 11.4 sets out the procedure British Telecom must follow if it wishes to withdraw a call box whose annual revenue falls below the minimum figure. This procedure broadly follows the existing arrangements. The aim is to ensure that all those with a legitimate interest are informed and have an opportunity to make comments for the Director to consider.

23 Paragraph 11.5 is concerned with the provision of new public call boxes, 11.5(a) dealing with the installation of new permanent boxes at new locations, for example on a new housing estate and 11.5(b) with temporary call boxes for example, those installed at major conferences, exhibitions, sporting events etc. British Telecom must, in consultation with the Director, publish the criteria governing when it will provide such call boxes. It is expected that these guidelines will largely follow existing practice.

24 Paragraph 11.6 obliges British Telecom to provide call boxes at any location where the person requesting a box guarantees to pay its full cost.

25 Condition 12 obliges British Telecom to provide maritime telecommunication services in accordance with the Radio Regulations of the International Telecommunications Union. When they are on the high seas ships are outside the Licensed Area so the obligation on British Telecom is to provide links from ships over its network in this country to any network termination point, which could be on customer premises or a connection with another system (eg in Hull).

26 Conditions 1 to 12 are included in the draft licence in accordance with Clause 8 (1) (a) and require British Telecom "to provide such telecommunication services as are specified in the licence". Conditions 13 and 14 fulfil the

requirement in Clause 8(1)(b) that the licence must require British Telecom "to connect or permit the connection to any telecommunication system to which the licence relates of such other telecommunication systems and such apparatus as are specified" or described in the licence.

27 Condition 13 obliges British Telecom to:

- (a) connect its system to any telecommunication system run by someone else (eg the Hull system or a private branch exchange system in an office block) whenever the other system is licensed to connect to the British Telecom system (ie British Telecom must install such wires etc, forming part its system, as are needed to connect the two systems together);
- (b) provide other telecommunication services to the operator of the other system once it has been connected to enable the other operator to obtain telecommunication services (eg if a customer in Hull or a person using an extension connected to a private branch exchange dials a telephone number on the British Telecom system, British Telecom must connect the call, and convey the messages to the person receiving the telephone call);
- (c) maintain any call routing apparatus (eg the actual private branch exchange) contained in the other system if the conditions of the other system's licence say that British Telecom must maintain such call routing apparatus if a connection is to be made. (This obligation will decline in importance as the maintenance of new call routing apparatus is progressively liberalised).

28 Paragraph 13.3 lays down the circumstances when British Telecom will be exempt from these obligations; for example when the connection might be unsafe. Paragraphs 13.4 and 13.5 described the conditions British Telecom may impose when it makes a connection; paragraph 13.6 says that if there is disagreement the Director may attribute but (paragraph 13.7) this does not apply when a connection is made on standard charges, terms and conditions to another system operated under a general or class licence (eg with private branch exchanges).

29 As the footnote to condition 13 makes clear, the connection together of different telecommunication systems can raise complex technical, operational and commercial problems which will require further consideration before the Licence is finally granted. One of the issues which needs further consideration is telephone numbering arrangements.

30 Condition 14 obliges British Telecom generally to connect, or permit the connection, to its system of any apparatus which is approved under Clause 21 of the Bill.

31 Condition 15, which is required by Clause 8(1)(c) of the Bill, obliges British Telecom to permit any person who is running a telecom system connected to the British Telecom systems to provide any telecom services to others which he is permitted to provide under his licence. Condition 15 also obliges British Telecom to permit any person running such a system or using any apparatus connected to the British Telecom systems to provide services which do not fall within the definition of telecommunication services in the Bill using his system. This is to ensure that people remain free to provide services like banking or the provision of information over the telephone.

32 Condition 16 obliges British Telecom to publish charges, terms and conditions for the generality of its telecommunication services, as required under Clause 8(1) (d), and to provide those services in accordance with those charges, terms and conditions. Condition 17 forbids British Telecom from showing undue preference or exercising undue discrimination, as required under Clause 8(1) (e).

Section 2 of Part 2

33 Condition 18 prevents British Telecom cross-subsidising its apparatus supply business, or its apparatus production business (see condition 21) or its provision of radio services with revenue from its "Systems Business". It also prevents British Telecom cross-subsidising its apparatus production business or its provision of mobile radio services out of revenue from its apparatus supply business but this second prohibition is to last only while British Telecom's apparatus supply business constitutes a monopoly situation under the Fair Trading Act definition. Condition 18 permits cross-subsidies where these are required under the licence as for example where British Telecom provides the 999 service free of charge or where it runs public call boxes at a loss.

34 Condition 19 provides a mechanism for ensuring that such cross-subsidies can continue even when full competition has been introduced. It permits, but does not oblige, British Telecom to introduce "Access Charges" to share the cost of the loss-making services it is obliged to provide with other operators who make use of BT's networks in providing telecommunication services to their own customers. The details of these "access charge" arrangements have not yet been worked out, but the broad principle is that, for example, the charge for all telephone calls, made into a local area from outside should include an element to help

meet the costs of the loss-making services. If Access Charges are introduced, condition 19 requires that they should also be levied on trunk calls made through British Telecom's own network. The condition requires British Telecom not to impose a higher charge on other operators than it does in respect of its own trunk calls and as a further safeguard the Director must approve the method used for calculating it. Condition 19 also requires the proceeds of the Access Charge to be used only for meeting the cost of the 999 service, public call box services and apparatus for the disabled and any losses made in rural areas.

35 Condition 20 requires British Telecom to establish separate accounting and reporting arrangements for its Systems Business and its Apparatus Supply Business. It lays down certain rules about how these arrangements are to be implemented. British Telecom is given until 1 April 1987 to complete the separation of accounts because its current nationalised industry accounts and organisation need substantial further alteration before the separation can be fully accomplished.

36 Condition 21 obliges British Telecom to establish a separate subsidiary company for its apparatus production activities by 1 July 1986. Once the subsidiary is established British Telecom itself will not be allowed to engage in apparatus production. Condition 21 also lays down an open tender procedure to be followed by British Telecom when it acquires apparatus from its apparatus production company in some circumstances, but there are exceptions for prototype apparatus etc. British Telecom must satisfy the Director that, when it combines the supply of apparatus with the provision of telecom services to a customer there will be a fair opportunity for British Telecom's competitors in the apparatus supply market to obtain such services for their own customers on equivalent terms.

37 Condition 23 requires British Telecom to inform the Director about any general proposals for changing its systems in ways which would require customers or manufacturers to buy or produce modified apparatus, and the procedures which it operates for giving advance notice of such changes. This is to ensure that modifications and improvements to the network are carried out so as to give customers and manufacturers sufficient warning that their apparatus may become obsolescent.

38. Condition 24 places a limit on the prices BT may charge for the main services provided by its local networks. For five years from the date when the licence comes in force, the prices charged for those services, taken together, must be kept below the rate of inflation by "X" percentage points. The value of X will be determined nearer the date of issue of the licence taking into account the circumstances at that time. The prices covered by condition 24 are connection charges, the rental of an exchange line and local call charges, including local calls made from public call boxes. As the footnote to condition 24 makes clear, the possibility of including trunk calls as well is still being studied. An illustration of the working of the RPI minus X formula is attached to these notes.

39. Condition 25 provides for British Telecom to levy uniform maintenance charges for exchange lines over the first five years of the licence. Maintenance charges are the main component of the present "rental" charged for exchange lines. The footnote to condition 25 points out that condition 25 will need to be removed where simple resale of private circuits is permitted. This footnote to condition 25 also applies to condition 26.

40. Condition 26 provides that residential connection charges will be uniform over the first five years of the licence when the work involved takes less than 100 hours.

41. Condition 27 obliges British Telecom to continue its present practice of issuing a Code of Practice for its employees and customers. The present Code describes the terms on which BT provides services, the quality of service BT aims to achieve and the procedures and contact points for customers who have complaints or queries about their bills, service faults, directories etc. The present Code will need to be amended to reflect the changes brought about by the Bill, in particular the ending of provision of service under schemes. In future there will be a contract between BT and its customers which will substantially increase customers' legal rights and the Code has to reflect this change. Condition 27 therefore allows three months for the publication of the new Code but in preparing this British Telecom must consult the Director. British Telecom must also consult the Director about the Code's operation at least once every five years.

42. Condition 28 enables British Telecom's customers to have access to independent arbitrators in respect of small disputes related to the provision of the telecom services by BT. This continues existing arrangements, whereby dissatisfied customers can take their complaints to the Chartered Institute of Arbitrators. In future, when schemes are replaced by contracts, it will be open to dissatisfied

customers to take legal action but for the ordinary customer court action is normally too expensive and too lengthy. Condition 28 therefore enables them to seek resolution of disputes involving small sums through independent arbitrators. A limit, to be agreed between the Director and British Telecom, will be placed on the sums which can go to arbitration. Initially this is likely to be £500, the same figure as at present.

43. Condition 29 requires British Telecom to receive and consider representations from consumer bodies about its provision of services and its supply of apparatus. The Director, bound by the statutory duties in Clause 3, has the ultimate responsibility for looking after consumers' interests and he will also establish, under Clause 50 of the Bill, national advisory bodies for Scotland, Wales, Northern Ireland and England which will be concerned with consumer matters. There are also expected to be local, non-statutory bodies, which will have a role in sorting out complaints at local, as opposed to national, level.

44. Condition 30 is related to Clause 23 of the Bill which enables the Secretary of State or the Director or persons authorised by them to approve metering systems attached to licensed telecommunication systems. It is envisaged that the work of administering an approvals scheme under Clause 23 will be undertaken by the British Approvals Board for Telecommunications but the precise form of the scheme is still being considered. Thus condition 30 is likely to need substantial revision before the licence is finally issued.

45. Conditions 31 to 34 impose obligations on British Telecom relating to the special requirements of the disabled for telecom services and apparatus. The Government has made clear its determination to ensure that after privatisation the disabled are looked after and British Telecom has also given public assurances on this. The Government is confident that British Telecom will look after the disabled and conditions 31 to 34 are included in the licence to provide reassurance to the disabled.

46. Condition 31 covers the general needs of the disabled at large. It requires British Telecom to consult with the Director about the arrangements it makes to provide telecom apparatus (and its connection to the BT system and its maintenance thereafter) to meet all reasonable demands by disabled persons. British Telecom must also participate in the work of any advisory body on the disabled which the Director may establish under Clause 50 of the Bill. The effect of condition 32 is to oblige British Telecom to continue to make available telephones which incorporate the inductive coupler (which enable people with suitable hearing aids to use the telephone) and telephones with amplifiers

(which enable hearing impaired people without hearing aids to use the telephone).

47. Condition 33 requires British Telecom to work towards installing in all public call boxes apparatus to enable people with hearing aids to use the telephones in those call boxes. British Telecom has already embarked on such a programme to fit inductive couplers to all public call boxes and expects to do this by the end of 1985. British Telecom is already obliged by condition 3 to continue to provide directory enquiry services and condition 34 provides that, if British Telecom should introduce charges for these services, those eg the blind who cannot use printed directories should not be financially disadvantaged. This shall be done by either providing directory enquiry services free of charge to such people or, if this is not practicable, compensating them afterwards.

48. Condition 35 prevents linked sales by placing an obligation on British Telecom, subject to certain specified exemptions, not to make it a condition of providing any telecom service or supplying any telecom apparatus, or of doing any of those things on more favourable terms, that any other telecom service or apparatus should be acquired from either British Telecom or any other specified person.

49. Condition 36, which prohibits certain exclusive dealing arrangements, places an obligation on BT, except with the written consent of the Director and subject to certain specified exemptions, not to make it a condition of buying any telecom apparatus that the supplier of that apparatus should:

- (a) provide a telecom service or other telecom apparatus to BT or another person; or
- (b) not provide that service or supply that other apparatus to another person.

50. Condition 36 also says that, while BT may agree with another person to act as sole supplier of some or all of that person's apparatus, if the Director is satisfied that that person did not willingly agree to give BT that sole right, the Director may oblige BT not to impose such a condition in future either in all circumstances or in certain specified circumstances. More work needs to be done on condition 36 to ensure that it deals satisfactorily with intellectual property rights etc.

51. Condition 37 requires that, when British Telecom supplies telecom apparatus as part of a single transaction or package also involving the provision of a telecom service, it must charge not less than the standard charges

for the services. It must also separate the charges for the apparatus from the charges for the services in any quotation or invoice relating to the transaction.

52. Condition 38 places an obligation on BT to draw up, with the agreement of the Director, a Code of Practice on the confidentiality of customer information for those of its employees engaged in its Systems Business. The Code will specify the people to whom information about a customer cannot be disclosed without the customer's consent and regulate the information about any customer or service which may be disclosed within the Business.

53. Condition 39 requires BT to pay a fee on the grant of the licence and an annual fee thereafter which will represent BT's share, as determined by the Director, of the cost of running OFTEL and any related costs incurred by the Monopolies and Mergers Commission. The annual fee shall be subject to a maximum limit of 0.05% of the annual turnover of the Systems Business.

54. Condition 40 places an obligation on BT to provide the Director with any information he may reasonably require to enable him to carry out his functions.

55. Condition 41 obliges British Telecom to give the Director 30 days prior notice, subject to the exception specified in paragraph 41.5, of any agreement for the establishment or control of a body corporate or the establishment of a partnership for the running of a telecom system under a licence, the provision of telecom services involved in the running of a system under licence or for the production of telecommunication apparatus resulting in the acquisition of a market share of more than 20%. The same obligation is also imposed about any other agreement or arrangement in the nature of a joint venture for running telecom systems or providing telecom services.

56. Conditions 42 and 43 set out the limitations on British Telecom's obligations under the licence. The questions whether it is "impracticable" to provide a service or whether there is no "reasonable" demand for a service can in the final analysis be answered only by the Courts. However, there are circumstances where it is clearly impossible to provide services and these are explained in paragraph 42.1. Paragraphs 42.2 and 42.3 set out circumstances where British Telecom is entitled to refuse service because the demand would not be reasonable. Condition 43 gives British Telecom exemption from its licence obligations on grounds of force majeure.

57. Condition 44 contain definitions and interpretations relating to the other conditions.

PART 3: REVOCATION

58. This Part lists the circumstances under which the licence may be revoked.

PART 4: AUTHORISATION FOR OTHER SYSTEMS TO CONNECT AND TO PROVIDE SERVICES

59. This Part lists those systems and apparatus which are authorised to connect to BT's systems covered by this licence, and specifies the services which they are authorised to provide.

PART 5: EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE TELECOMMUNICATIONS CODE

60. Part 5 of the licence sets out the conditions with which British Telecom must comply in making use of Telecommunications Code powers contained in Schedule 2 to the Telecommunications Bill to install apparatus. They have been drafted on a provisional basis pending further consultations with interested parties including both British Telecom itself and local authority associations.

61. The conditions in Part 5 of the licence are designed to reflect two of the criteria set out in Clause 10(4) of the Bill which are designed to ensure:

- (a) that the physical environment is protected and, in particular, that the natural beauty and amenity of the countryside is conserved; and
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary.

62. The Telecommunications Code is constructed on the assumption that the planning status of telecommunication operators is a matter to be determined separately under planning legislation. The provisions in the draft licence qualifying the exercise of Code powers will need to be reconsidered, therefore, in the light of responses to the Department of the Environment's forthcoming consultation document on the revision of the Town and Country Planning General Development Order 1977 made under the Town & Country Planning Act 1971. Conditions 1 and 2 of Part 5 assume that British Telecom will continue to enjoy its present exemption from planning controls and are designed to ensure that in these circumstances British Telecom's present practices in relation to the protection of the environment are maintained.

63. Part 5 of the licence may also require modification

following representations made during the review of the Public Utilities Street Works Act 1950 which was foreshadowed in evidence to the House of Commons Select Committee on Transport in January 1983 and which is shortly to be set in train.

64. The final version of the licence will also need to reflect the different legislation that applies in Scotland and Northern Ireland in relation to some of the matters covered. The relevant definitions in the present version are appropriate only for England and Wales.

65. Condition 1 requires British Telecom to place underground all new telecommunication lines in a designated conservation area and the City of London, except where it undertakes emergency works, replaces existing poles and lines with wires of no larger diameter and makes additional service connections in an area where service is already provided by means of overhead lines.

66. Condition 2 covers other environmentally sensitive areas and in particular National Parks and Areas of Outstanding Natural Beauty. It requires British Telecom in these cases to give notice to the local planning authority before installing overhead apparatus. British Telecom is obliged to consider any written comments or suggestions made within 28 days of the giving of the notice and, where a decision is taken not to modify the original proposals in the light of these comments, British Telecom is obliged to give the planning authority a written notification of its reasons.

67. Condition 3 requires British Telecom to notify the highway authority of its intention to install telecom apparatus where the installation involves the breaking up of a maintainable highway. Quite independently of the licence British Telecom will continue to be subject to the provisions of the Street Works Code in the Public Utilities Street Works Act 1950, which requires the agreement of the highway authority to a plan and section of major works. Condition 3 does not interfere with these arrangements, but extends them by obliging the licensee to give written notice of his intention to install any apparatus which involves the breaking up of a maintainable highway. It also obliges British Telecom to consider any written comments or suggestions made by the highway authority within specified periods which are consistent with the requirements of the Street Works Code.

68. Condition 4 requires that, when emergency works are carried out which would otherwise require prior notice under Conditions 2 and 3, written notice has to be given to the relevant authority as soon as possible after the

commencement of the works.

69. Condition 5 obliges British Telecom to prepare and follow a code of practice to be agreed with the Secretary of State on the installation of external telecommunication apparatus. It is envisaged that the matters to be covered in the code of practice, which will draw extensively on BT's existing procedures, will include:

- (i) British Telecom's normal policy practice in relation to the placing of wires either underground or overhead and, in particular, its policy on the placing of overhead wires in environmentally sensitive areas other than those specifically mentioned in the licence conditions;
- (ii) the steps British Telecom will take to explore the possibility of using existing subways, ducts and poles owned by other bodies before constructing or erecting new ones;
- (iii) the installation of wires over maintainable highways particularly in respect of minimum heights and the involvement of highway authorities before wires (other than those covered in licence condition 3) are installed;
- (iv) procedures for the prompt removal, alteration or renewal of any overhead apparatus which has become dangerous;
- (v) the circumstances in which British Telecom will lay apparatus in verges and footways rather than in the carriage-way;
- (vi) the positioning of poles and related above ground apparatus in the street;
- (vii) the keeping of adequate records of all underground cables laid and the availability of such records to bona fide inquiries eg highway authorities and statutory undertakers; and
- (viii) British Telecom's practice in relation to the depth and protection of underground plant.

70. The main advantages of a code of practice are that it can allow for greater flexibility to meet the differing circumstances that will exist throughout the country and allow for changes that are appropriate in response to technological developments, whilst bringing the matters referred to within the scope of the Director's power to

enforce licence conditions. Where British Telecom appears not to be complying with the code of practice, it will be open to an interested party to take the matter up with the Director and, if he considers that a breach has occurred, he will be able to issue an enforcement order as described in these notes on part 2 of the licence.

71. The matters referred to in British Telecom's code of practice will set a standard to which other Telecommunication Code Operators will be expected to conform. In the case of other operators to whom Code powers may be applied, for example those running local wideband cable systems, it will be possible for interested parties to make representations, during the period of consultation initiated by the Secretary of State under Clause 10 of the Bill, to the effect that particular aspects of the code of practice should be modified or strengthened in the light of local circumstances.

72. The licences for other operators will also need to include provisions about bonding to ensure that any damage, eg to street surfaces, done by those operators will be repaired even if the operator goes out of business. Because of British Telecom's resources it is not thought appropriate to include bonding arrangements in British Telecom's licence.

SCHEDULE 1: DEFINITION OF THE APPLICABLE SYSTEMS

73. Schedule 1 defines "the Applicable Systems", that is to say the systems which the licence authorises British Telecom to run. The systems include both British Telecom's major networks such as the Public Switched Networks and isolated point-to-point links (such as "external extensions").

74. The Applicable Systems are defined

- (a) by reference to specified places to or from which each system may convey messages (paragraph 1(b)); and
- (b) by specifying certain particular systems which are excluded (paragraph 1(c)).

75. It is also stipulated that British Telecom alone shall run all the telecom apparatus comprised within each System and used for the purpose of running it (paragraph 1(a)). This sub-paragraph while ensuring that the running of the national telecommunications network does not pass out of BT's hands, is drafted so as to permit:

- (a) flexible arrangements for apparatus associated with the system but not used to run it (eg

apparatus for the maintenance of telephone exchanges);

- (b) the sharing of facilities, provided that BT runs those facilities to the extent that they are used for the running of Applicable Systems.

76. The concept of the 'network termination point' (NTP) is central to the definition. The NTP is a precise location (in practice it will usually be the mating surfaces of the contacts in apparatus such as a socket or block terminal). It is the point or points at which energy (as defined in section 4(1) of the Act) may pass in either direction between an Applicable System and apparatus connected to it but not forming part of it. The Applicable Systems are then those systems that may convey messages from one NTP on served premises to another but no further. The NTP therefore forms the boundary of any Applicable System and the licence does not authorise British Telecom to run anything beyond the NTP.

77. In addition to conveying messages between one NTP and another, the Applicable Systems are also defined to permit the conveyance of messages between other points:

- (i) between an NTP and a place not on served premises; this permits such system facilities as operator services where messages pass between a subscriber and a point within the system;
- (ii) between any two places which are not NTPs, without passing through an NTP, provided that the conveyance of such messages is not a telecommunication service (as defined in section 4(2) of the Act) or is a call box service; this permits a wide variety of necessary "system housekeeping" messages to be passed within the system and also permits public call box services not located on served premises;
- (iii) between a place in the UK and a ship: this permits the provision of ship to shore radio telecommunication services and similar maritime services.

78. These arrangements have another important effect. They mean that the system may not be used to provide telecommunication services except via an NTP. The NTP is therefore defined as the uniform point of connection through which all telecommunication services (other than public call box services and maritime services) must be provided. This provides for a uniform point of connection, facilitating fair competition in the supply of telecommunication

apparatus and services.

79. The NTP must be located in one of two classes of apparatus. For purposes of connection to the generality of apparatus including telecommunications systems such as private branch exchanges and data communication systems, the NTP is located in a "Network Termination and Testing Apparatus" (NTTA), which forms part of the applicable systems and which must be on served premises. The NTTA is permitted only to have "network" functions, including the means of physical connection between the system and other apparatus, network testing and functions such as multiplexing and signal conversion, necessary to proper communication between apparatus and system. Customer's apparatus functions, such as private branch switching and telex terminals, cannot be integrated with the NTTA, but must always form part of separate apparatus, connected to the systems at an NTTA.

80. When connection is to be made between the applicable systems and other individually licensed telecom systems such as those run by Hull and Mercury, the NTP concept still applies but the NTP may instead be located in "Network Connection Apparatus" (NCA). In such cases, the connection arrangements will be subject to negotiation between the parties and there are no restrictions placed on the functions that can be embodied in the NCA. This allows full flexibility in the negotiation of sensible arrangements within the framework of licence condition 13 which requires British Telecom to connect other licensed systems to its system.

Excluded Systems

81. The schedule excludes British Telecom from running telecom systems in the area in which the City of Kingston upon Hull is at present authorised to run telecom systems. British Telecom may not therefore compete with Hull within the latter's area (paragraph 1(c)(ii)). Technical exceptions from this are made

- (a) to allow connection between the British Telecom and Hull systems in the Hull area;
- (b) to allow British Telecom to run trunk lines across the Hull area and to locate other parts of its system there (eg its existing automanual centre) provided it does not offer connection facilities to subscribers.

82. The Applicable Systems also exclude all mobile radio services except the maritime services mentioned above (Paragraph 1(c)(iii)). This means that British Telecom may

not, under this licence, run mobile radio services such as radio telephones and radio paging services, and will require separate licences for these services.

83. The Applicable Systems also exclude telecommunication systems run under any other licence granted, or having effect as if granted, under section 7 of the Act. This is primarily intended to ensure that British Telecom is not able to use the authority of this licence to run branch systems (PBXs and data communication systems, including local area networks, are examples of such branch systems). Were British Telecom able to do so, it might obtain an unfair competitive advantage through the application of Telecommunication Code powers and through the exclusive ability to dispense with the NTTA to which privately supplied apparatus must be connected. BT will be able to run branch systems, but only under another licence, and in this respect will be on exactly the same footing as any other person.

84. The Applicable Systems exclude, as they must, systems located outside the United Kingdom. Also excluded are systems run by international organisations, many of whom enjoy privileged status under treaties or international agreements.

85. The definition of the Applicable Systems raises complex legal and technical issues and will require further consideration with interested parties.

Illustration of the working of the RPI-X formula

As defined in the draft licence conditions, the formula relates to increases in prices charged for the services in the basket. Any such increases are weighed together in proportion to the contribution of each service to BT's total revenue in the most recent financial year for which audited accounts are available. The average increase in price for the basket, so obtained, must be less than the increase in the retail price index over the twelve month period by X percentage points.

To show how the calculation might work, the table below gives, for each service in the basket, BT's revenue in the financial year 1982-83 and the proposed price increases as notified to POUNC.

	Revenue 1982/83; £m	Proposed % change
Connection charges - business	30.0	6.3
residential	54.2	7.1
Exchange line rentals - business	342.9	4.8
residential	879.4	4.8
Local call charges	1447.4	2.3
Local call charges from PCBs	56.1	-
	<hr/>	<hr/>
Total revenue from 'basket'	2810.0	

Combining these proposed price increases in proportion to 1982/83 revenues produces a proposed average price increase for the basket of 3.5%. This can be compared with an expected rate of inflation over the period to July 1984, when new audited accounts become available, of 5%.

DRAFT

25 OCTOBER 1983

LICENCE
GRANTED BY
THE SECRETARY OF STATE FOR TRADE AND INDUSTRY
TO
BRITISH TELECOMMUNICATIONS

Department of Trade and Industry
1 Victoria Street
LONDON SW1

Price £1.00 net

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SCHEDULE 1: Definition of the Applicable Systems

LICENCE GRANTED TO BRITISH TELECOMMUNICATIONS TO RUN
TELECOMMUNICATION SYSTEMS UNDER SECTION 7 OF THE
TELECOMMUNICATIONS ACT 1984

PART I: THE LICENCE

1 The Secretary of State, in exercise of the powers conferred on him by section 7 of the Telecommunications Act 1984 ("the Act"), hereby grants to

- (i) British Telecommunications; and
- (ii) each of its subsidiaries approved for the purpose by the Secretary of State

(hereinafter except in paragraph 2 of this Part and Part 5 referred to as "the Licensee") a licence, subject to the conditions set out in Part 2, for the period specified in Paragraph 3 and subject also to revocation as provided for in Part 3 to run the telecommunication systems specified in Schedule 1 ("the Applicable Systems") and authorises the Licensee to do all or any of the acts specified in Part 4.

2 The Telecommunications Code contained in Schedule 2 to the Act shall apply to British Telecommunications subject to the exceptions and conditions set out in Part 5.

3 This Licence shall be of 25 years' duration in the first instance but shall be subject to revocation thereafter on ten years' notice of such revocation and such notice shall accordingly not be given before the end of the fifteenth year after the granting of this Licence.

UNIVERSAL PROVISION OF TELECOMMUNICATION SERVICES

1.1 The Licensee shall provide or cause to be provided to every person who requests the provision of such services at any place in the Licensed Area:

- (a) voice telephony services; and
- (b) other telecommunication services

consisting in the conveyance of messages by means of the Applicable Systems, except where the provision of those services is not practicable, where there is no reasonable demand for them, or to the extent that the Director is satisfied that any reasonable demand is already met and that it would not be reasonable in all the circumstances to continue to require the Licensee to provide them.

PROVISION OF TELECOMMUNICATION SERVICES IN RURAL AREAS

2.1 Without prejudice to condition 1 the Licensee shall provide or cause to be provided to every person who requests the provision of such services in a rural area within the Licensed Area:

- (a) voice telephony services; and
- (b) other telecommunication services

consisting in the conveyance of messages by means of the Applicable Systems, except where the provision of those services is not practicable, or where there is no reasonable demand for them, or to the extent that the Director is satisfied that any reasonable demand is already met and that it would not be reasonable in all the circumstances to continue to require the Licensee to provide them.

PROVISION OF DIRECTORY ENQUIRY SERVICES

3.1 The Licensee shall provide directory enquiry services, that is to say telecommunication services whereby anywhere in the licensed area any person using any item of telecommunication apparatus lawfully connected to any of the Applicable Systems in such a way as to be capable of transmitting and receiving unrestricted two-way voice telephony services may be provided, by means of voice telephony or some other means, with directory information for the purpose of facilitating the use of the voice telephony services provided by the Licensee by means of the Applicable Systems.

3.2 The obligation in paragraph 3.1 shall not apply when the directory information relates to a person who has requested the Licensee not to provide directory information in relation to him.

PROVISION OF INSTALLATION AND MAINTENANCE SERVICES

4.1 Where it provides telecommunication services in accordance with Conditions 1 and 2 the Licensee shall provide, if any person to whom those services are provided so requests, installation and maintenance services in relation to any item of telecommunication apparatus or any telecommunication system:

- (a) which is lawfully connected to any of the Applicable Systems; and
- (b) by means of which any message is transmitted, conveyed, switched or received:

except

- (i) Where the provision of those services is impracticable whether because the apparatus or system in question is beyond economic repair, because the necessary components or tools are no longer available or otherwise;
- (ii) where the person requesting the service will not pay the cost of the service;
- (iii) where the apparatus or system has been supplied by a person who is not a member of the Licensee's Group and the apparatus or system is not run under a licence which requires it to be maintained by a person of a description including the Licensee if it is to be, or is to be kept, connected to the Applicable Systems; or
- (iv) where the approval of the apparatus for connection to the Applicable System does not require it to be maintained by a person of a description including the Licensee if it is to be, or is to be kept, connected to the Applicable Systems.

OBLIGATION TO PROVIDE INTERNATIONAL SERVICES

5.1 The Licensee shall take all reasonable steps necessary to enable there to be connected to the Applicable Systems, to the extent necessary to satisfy all reasonable demands, those telecommunication systems in countries and territories outside the United Kingdom to which it is authorised to connect the Applicable Systems under Part 5 of this licence and shall, save insofar as the provision thereof is impracticable or not authorised under this licence, provide such telecommunication services as satisfy all reasonable demands by persons in the UK who are:

- (a) using telecommunication apparatus connected to the Applicable Systems; and
- (b) running connectable telecommunication systems

for telecommunication services of the kinds the Licensee is authorised hereunder to provide by means of any of the Applicable Systems between the United Kingdom and places in those countries and territories.

PUBLIC EMERGENCY CALL SERVICES

6.1 The Licensee shall provide a public emergency call service, that is to say a telecommunication service whereby anywhere in the Licensed Area any member of the public may, at any time and without incurring any charge, use any item of telecommunication apparatus lawfully connected to any of the Applicable Systems in such a way as to be capable of transmitting and receiving unrestricted two-way voice telephony services to communicate as swiftly as practicable with any of the emergency organisations.

6.2 In this condition:

- (a) "emergency organisations" means in respect of any locality:
 - (i) the relevant public police, fire, ambulance and coastguard services; and
 - (ii) such other similar organisations providing assistance to the public in emergencies as the Director may from time to time determine and whose names are inscribed on a list kept by him.
- (b) telecommunication apparatus shall only be regarded as capable of transmitting and receiving unrestricted two way voice telephony services if it is capable of both:
 - (i) transmitting for conveyance by means of an Applicable System specific signals designated by the Licensee for the purpose of establishing communication with voice telephony apparatus controlled by the emergency organisations; and
 - (ii) transmitting and receiving uninterrupted simultaneous two way speech conveyed, or as the case may be to be conveyed, by means of that Applicable System.

6.3 The Licensee may restrict the telecommunication services provided under this condition in respect of any of the emergency organisations mentioned in paragraph 6.2(a)(ii) to the extent to which it is agreed by the authority responsible for the emergency organisation in question or, in the absence of such agreement, to the extent authorised by the Director.

CALLS MADE BY EMERGENCY ORGANISATIONS

7.1 The Licensee shall for the purpose of facilitating the provision of services by emergency organisations in circumstances where telephone numbers cannot be dialled direct provide operator assisted voice telephony services enabling officials of any authority designated by the Secretary of State to communicate with any telephone numbers in either the United Kingdom or overseas either:

- (a) with the least possible delay if such persons dial the code designated by the Licensee and offer evidence of identity; or
- (b) with priority over all communications except emergency calls and those covered by (a) above if such persons dial the code designated by the Licensee and offer evidence of identity.

7.2 In this condition "emergency organisations" has the same meaning as in Condition 6.

MARITIME EMERGENCY SERVICES

8.1 The Licensee shall provide distress, urgency and safety services for shipping in accordance with the Radio Regulations of the International Telecommunications Union to the extent that the cost of providing such services is met by the Secretary of State. In the event of any dispute about their cost the amount thereof shall be determined by the Director.

PLANNING AND IMPLEMENTATION OF SPECIAL ARRANGEMENTS FOR
EMERGENCIES

9.1 The Licensee shall, after consultation with the authorities responsible for emergency organisations and such departments of central and local government as the Director may from time to time determine and whose names are inscribed on a list kept by him, formulate plans or other arrangements for making provision for, or as the case may be the rapid restoration of, such telecommunication services as are practicable and may reasonably be required in emergencies.

9.2 The Licensee shall, on request by such person or persons as is or are designated for the purpose in the appropriate plans or other arrangements, implement such plans insofar as it is reasonable and practicable to do so.

9.3 Nothing in this condition precludes the Licensee from:

- (a) recovering the costs which it incurs in the formulation or implementation of the plans and arrangements from those on behalf of or in consultation with whom the plans or arrangements are made; or
- (b) making implementation of any plan or arrangement conditional upon the person or persons by whom or on whose behalf it is to be implemented indemnifying the Licensee for all costs incurred as a consequence of the implementation.

9.4 In this condition:

- (a) "emergency" includes but is not limited to any circumstance whatever resulting from major accidents, natural disasters and incidents involving toxic or radio-active materials;
- (b) "emergency organisations" has the meaning given to it in Condition 6.

FAULT REPAIR SERVICE FOR ESSENTIAL SERVICES

10.1 If any fault or failure of an Applicable System or of any apparatus referred to in paragraph 10.4 (b) (ii) causes any interruption, suspension or restriction of the telecommunication services provided by means of that Applicable System to any person described in Paragraph 10.2, the Licensee shall provide a fault repair service for the purpose of remedying such fault or failure so as to enable those services to be restored as swiftly as practicable to that person.

10.2 The Licensee shall, except where the Director otherwise agrees, provide the fault repair service to all persons:

- (a) who pay the Licensee's charges, or in respect of whom those charges are paid, for providing the fault repair service; and
- (b) who are engaged in the provision of any essential service, the supply of any essential goods or in public administration and
- (c) whose names and other particulars are notified to the Licensee by the person paying for the provision of the fault repair service.

10.3 The fault repair service shall be available for 24 hours a day or at such other times as may be agreed by the person paying for the provision of the service and the Licensee.

10.4 In this condition:

- (a) "essential service" and "essential goods" are those services and goods recognised by the Director as being essential.
- (b) "fault repair service" means a service to repair or adjust:
 - (i) any of the Applicable Systems, or
 - (ii) any telecommunication apparatus which the Licensee is contractually obliged to maintain.

PUBLIC CALL BOX SERVICES

11.1 The Licensee shall secure that call box services are provided at all public call boxes, whether installed before, on or after the date when this licence enters into force.

11.2 The Licensee may cease to provide call box services at any public call box other than a temporary call box but only if:

- (a) their continued provision is impracticable;
- (b) the revenue from the services provided at that box in any period of 12 months ending not more than 6 months before the cessation has fallen below the minimum figure agreed by the Director for the purpose in respect of that box or of boxes of that description (the "Minimum Figure") and the Licensee is not entitled to receive the difference between the revenue and the figure from any other person;
- (c) the box in question is located near another public call box at which such services continue to be provided and which is readily accessible from the place where the call box at which services will cease to be provided is installed;
- (d) the Licensee has, before the cessation, agreed with the Director that it will provide such services or cause them to be provided at another public call box to be installed in the immediate vicinity of the box at which they are no longer to be provided;
- (e) such services are available to members of the public at a private call box
 - (i) which is near the box at which services are to cease to be provided; and
 - (ii) which is readily accessible from the place where the public call box at which services will cease to be provided is installed; and

- (iii) the person controlling that private call box has entered into a contract with the Licensee undertaking to give members of the public unrestricted access to the private call box at all times (or for such periods of each day as the Director shall have approved in writing whether in relation to that call box or all call boxes of that class) for the purpose of obtaining such services; the Licensee shall take all steps necessary to ensure that the terms of all such contracts are observed;

- (f) if any authority with power to require the removal of the box in question requests the Licensee to remove it; or

- (g) the Director agrees that such services need no longer be provided:
 - (i) at the box in question; or
 - (ii) in accordance with a decision under Condition 1 or 2.

11.3 Where the Licensee ceases to provide call box services at any public call box on the ground that their continued provision there is impracticable, it shall use its best endeavours to provide such services at another call box readily accessible from the place where the first mentioned call box was installed failing which it shall send to the Director, to the smallest unit of local authority in the area in which the public call box is located and such consumer bodies recognised to be representing the interests of consumers and other users of such services in that area as the Director may specify, a notice specifying the reasons why it considers that the continued provision of call box services at that public call box is no longer practicable and inviting the local authorities and such bodies to make representations in regard to the proposed cessation to the Director within a period of 42 days from the giving of notice. The Licensee shall within a reasonable period resume the provision of the services at a public call box installed in a place which is readily accessible from the place where the public call box at which services are no longer provided was installed, if the Director, after considering the terms of the notice and any representations received by him in connection with it, concludes that the provision of call box services either in the place where the

first mentioned call box was installed or in a place readily accessible therefrom is practicable and within 70 days of the giving of the notice requires the Licensee to do so.

11.4 Where the Licensee proposes to cease to provide call box services at any public call box on the ground set out in paragraph 11.2(b) of this condition it may cease to provide those services at that box only if 28 days have elapsed after it has completed the following procedures, that is to say:

- (a) a notice shall have been posted prominently in or on the public call box specifying:
 - (i) that the Licensee is proposing to cease to provide services there;
 - (ii) the reasons for the proposal;
 - (iii) the Minimum Figure;
 - (iv) the steps (whether in the form of financial contributions or the provision of services) which if taken by others would oblige the Licensee to continue to provide services at that box;
 - (v) the address of the Licensee's office to which representations or objections with respect to the proposal may be made;
 - (vi) the period (not being less than 28 days commencing with the date when the notice is first posted in or on the public call box) within which representation and objections with respect to the proposal may be made;
- (b) a copy of that notice shall have been sent by registered post or recorded delivery to the smallest unit of local government for the area in which the public call box is located and to bodies recognised as representing the interests of consumers and of the users of such services in that area;
- (c) consideration shall have been given to any representation or objection duly made with respect to the proposal within the period specified in

sub-paragraph (a) (vi) above; and

- (d) a copy of the notice described in sub-paragraph (a) above shall have been sent to the Director, together with copies of any representations or objections that the Licensee has received with respect to the proposal and its comments and conclusions thereon.

11.5 After consultation with the Director the Licensee shall from time to time in accordance with Condition 14 publish guidelines for determining when:

- (a) public call boxes should be installed at new locations; and
- (b) temporary call boxes should be installed at major events of national or international standing

and shall install call boxes on request in accordance with those guidelines unless there are special circumstances which make it unreasonable to require the Licensee to do so.

11.6 Without prejudice to paragraph 11.5, the Licensee shall provide call box services at public call boxes or temporary call boxes installed in locations specified by any person who undertakes to pay to the Licensee its costs incurred in providing such services and to comply with the Licensee's terms and conditions.

11.7 In this paragraph:

- (a) "public call box" means any kiosk, booth, acoustic hood, shelter or similar structure to which members of the public have access at all times and at which apparatus is installed by the Licensee for the provision of voice telephony services;
- (b) "call box services" means the installation, repair and maintenance of voice telephony apparatus at call boxes; the service of conveying by means of any of the Applicable Systems sounds or signals to and from such apparatus installed in such boxes; directory enquiry services; and public emergency call services;
- (c) "temporary call box" means a public call box which is mobile or is installed for a limited period or is permanently installed but at which call box services are provided for limited periods of time;

- (d) "revenue", in relation to services provided at any public call box means the actual amounts received by the Licensee in respect thereof, together with a notional sum equal to 25 per cent of the aggregate of such amounts representing revenue earned in respect of transfer charge, credit and similar facilities provided at that box and of services provided and paid for elsewhere which involve conveyance of messages to that box;
- (e) "private call box" means telecommunication apparatus owned by or supplied to a person other than the Licensee by means of which call box services are or may be provided; and
- (f) "recognised consumer body" means a body recognised by the Secretary of State under section 25 of the Act to be representing the interests of consumers and other users of telecommunication services provided by means of the Applicable Systems or an advisory body appointed by the Director under section 50(2) of the Act.

MARITIME SERVICES

12.1 The Licensee shall so far as practicable provide two-way telecommunication services including voice telephony and data transmission services between ships and any network termination point in any of the Applicable Systems to meet all reasonable demands for such services. Such services shall comply with the requirements of the Radio Regulations of the International Telecommunications Union.

Condition 13

CONNECTION OF OTHER SYSTEMS

13.1 Subject to the provisions of this Condition the Licensee shall:

- (a) connect and keep connected to any of the Applicable Systems, or permit to be so connected and kept connected, any other Connectable System whenever the person running that system ("the Operator") so requires; and
- (b) provide such other telecommunication services as the Operator may reasonably require to secure that such a connection ("the Connection") is effected and maintained and to enable the Operator to provide Connection Services.

13.2 Where a Connectable System:

- (a) is connected to any of the Applicable Systems; and
- (b) has comprised in it Call Routing Apparatus which by virtue of the Operator's licence is required to be maintained by persons of a description including the Licensee, if it is to be, or to be kept, connected to a public telecommunication system

the Licensee shall, if the Operator so requests, but subject to such reasonable terms and conditions as the Licensee may require, carry out in respect of that apparatus such maintenance as is required by the Operator's licence to be provided by a person of that description.

13.3 The Licensee shall not be obliged under paragraph 13.1 above to make or maintain or permit to be made or maintained any Connection if -

- (a) it would be liable to cause the death of, or injury to, or damage to the property of, the Licensee or any person engaged in the Licensee's business, or to impair the quality of any telecommunication service provided by means of any of the Applicable Systems;

- (b) it would require an adjustment to, or modification of, the Applicable Systems or the provision by the Licensee of services which in any case would not be necessary in the opinion of the Director to effect or maintain the connection; or
- (c) any Access Charges permitted to be required under Condition 19 which are payable in respect of the Connection are not paid.

13.4 The Licensee shall not be obliged to do anything under paragraph 13.1. above unless the relevant conditions and terms have been complied with.

13.5 The relevant conditions and terms may relate to all or any of the following matters:

- (a) the charges to be paid by the Operator for anything done under paragraph 13.1;
- (b) the methods adopted or to be adopted to make or maintain the Connection;
- (c) the point or points in the Applicable System at which the Connection is made or is to be made;
- (d) any restrictions on the telecommunication services to be provided by the Licensee or the Operator being restrictions needed to satisfy international obligations or recommendations applying to Her Majesty's Government and accepted by them, or restrictions approved by the Director from time to time;
- (e) the form and manner in which messages are to be received by any of the Applicable Systems or by the Connectable System by means of the Connection;
- (f) the means by which any person sending a message by means of the Connectable System is to be made aware of whether that message is being conveyed or is to be conveyed by the Applicable System;
- (g) the means of securing that any message which will be conveyed by virtue of the Connection will be received with a signal quality which is in accordance with any obligations and recommendations of the International Telecommunication Union which apply to Her Majesty's Government and are accepted by them or with any other standard approved by the Director for the purpose

from time to time; and

- (h) if the Licensee will provide to the Operator an indemnity against any damage sustained by him in consequence of the Connection, provision by the Operator of an indemnity against any damage sustained by the Licensee in consequence of the Connection;

13.6 The relevant conditions and terms shall be such as are agreed between the Licensee and the Operator; but in default of such agreement they shall be such as are determined by the Director to be reasonably necessary in all the circumstances of the case to ensure:

- (a) that the Licensee can meet the costs incurred and earn a reasonable return in respect of any services provided or apparatus supplied by him for the purpose and is properly indemnified against any damage resulting from the Connection;
- (b) that the Licensee is reasonably able to finance the other services which it is required by this Licence to provide;
- (c) that the quality of telecommunication services provided by means of the Applicable Systems and any Connectable Systems is maintained;
- (d) that the requirements of fair competition, including the need of the consumer to have the means of knowing from whom he is obtaining any particular service, are satisfied.

13.7 Paragraphs 13.4, 13.5 and 13.6 shall not apply in relation to the Connection of a Connectable System where -

- (a) that system is licensed under a licence granted to all persons or to persons of a particular class; and
- (b) the Licensee offers to make and maintain that Connection and to provide the services necessary for the purpose for charges and on terms and conditions that satisfy the requirements of Condition 16.

13.8 In this Condition:

"Connectable System" means

- (a) a telecommunication system run under a licence granted under section 7 of the Act which permits the connection of the system to which the licence relates to any of the Applicable Systems, or
- (b) a telecommunication system in a country or territory outside the United Kingdom approved by the Secretary of State for the purpose;

"Connection Service" means a telecommunication service consisting in the provision to others of the conveyance or switching of any message which has been conveyed or switched by means of any of the Applicable Systems or which is to be conveyed or switched by means of such a system;

"message" means anything falling within paragraphs (a) and (d) of section 4(1) of the Act;

Footnote

This Condition contains the principles of the Government's policy governing the connection of telecommunication systems to systems run by public telecommunication operators. But the methods and arrangements by which connection can be effected are complex, involving intricate technical, operational and commercial considerations, and will require further discussions with BT and other parties which may make it necessary to amend the draft Licence.

CONDITION RELATING TO THE OBLIGATION TO CONNECT APPARATUS TO
THE APPLICABLE SYSTEM

14.1 The Licensee shall:

- (a) connect at any network terminating and testing point on served premises any of the Applicable Systems to any item of telecommunication apparatus owned by another person at the written request of that person being apparatus which is approved for the time being for connection to that Applicable System under section 21 of the Act where such connection is or is to be made by means requiring the use of a tool;
- (b) not discontinue the connection to such System of any such apparatus as may have been connected in accordance with sub-paragraph (a) above;
- (c) permit any other person to connect, or to keep connected, at a point of the kind described in sub-paragraph (a) above to any such System any such apparatus where such connection is or is to be made by means that do not require the use of a tool

provided however that in every case

- (i) any conditions specified in the approval of that apparatus (or as the case may be in the designation under section 21(6) of the Act of the standard or standards relating to that apparatus) for the purpose of the connection of that apparatus and that System are complied with;
- (ii) the connection is practicable;
- (iii) the Licensee shall not be obliged to connect or to permit the connection or to permit there to remain connected to any such System any apparatus which either

- (A) conformed to the relevant standard or standards at the time when the connection to that System was made, but no longer does so and does not conform to the standard or standards for the time being designated under section 21(6) of the Act for that apparatus and that System; or
- (B) while continuing to conform with the relevant standard the apparatus is in the opinion of the Licensee liable to cause the death of or injury to, or damage to the property of, the Licensee or any person engaged in the running of the System or to impair the quality of any telecommunication service provided by means of any Applicable System until such time as the Director expresses a contrary opinion.

PROVISION BY OTHERS OF SERVICES BY MEANS OF THE APPLICABLE
SYSTEMS

15.1 The Licensee shall permit any person who is licensed to run a Connectable System under a licence granted or having effect as if granted under section 7 of the Act which authorises him to provide telecommunication services to others, being services which include Connection Services, to provide Connection Services whilst that Connectable System is connected to the relevant Applicable System.

15.2 The Licensee shall permit any person:

- (a) using telecommunication apparatus which is lawfully connected to any of the Applicable Systems or which is connected to another telecommunication system which itself is connected to any of the Applicable Systems; or
- (b) running a telecommunication system which is so connected

to provide by means of or in relation to the telecommunication system any service other than

- (i) Connection Services; or
- (ii) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of telecommunications apparatus comprised in an Applicable System.

PUBLICATION AND IMPOSITION OF STANDARD CHARGES, TERMS AND CONDITIONS

16.1 The Licensee shall, except insofar as the Director may agree in writing and except in respect of terms and conditions agreed or determined for the purposes of condition 13.4 to 13.6 in relation to Connectable Systems run or to be run by public telecommunication operators:

(a) publish in the manner and at the times specified in paragraph 2 of this condition a notice specifying, or specifying the method that is to be adopted for determining, the charges and other terms and conditions on which it offers:

(i) to provide each description of telecommunication service by means of or in relation to any of the Applicable Systems in pursuance of an obligation imposed by or under this Licence; or

(ii) to grant permission to provide Connection Services by means of the Applicable Systems; and

(b) where it supplies telecommunication services or permits others to provide Connection Services, supply, or as the case may be permit to be supplied, those services at the charges and on the other terms and conditions so published and not depart there from.

16.2 Publication of the charges and other terms and conditions shall be effected by:

(a) sending a copy thereof to the Director not less than 14 days after the date on which this Licence enters into force and thereafter not less than two months before any proposal to amend any charge, term or condition or the method of determining the same, is to become effective, provided however that if the Licensee and the Director agree to any variation in a proposal to amend those charges, terms, conditions or methods in the said period of two months the Licensee shall not be prevented from making the amendments with variations two months after the date when the notice was first sent to the Director in accordance with this sub-paragraph;

(b) placing a copy thereof in a publicly accessible part of every major office of the Licensee in such manner and in such place that it is readily available for inspection free of charge by members of the general public during such hours as the Secretary of State may prescribe under section 18(4) of the Act that the register of licences and orders is to be open to public inspection;

(c) sending a copy thereof or such part or parts thereof as are appropriate to any person who may request such a copy.

16.3 In this condition "major office" means the office of the General Manager of each Telephone Area established on the appointed day or such other offices as the Director may agree from time to time.

PROHIBITION ON UNDUE PREFERENCE AND UNDUE DISCRIMINATION

17.1 The Licensee shall not show undue preference to, or exercise undue discrimination against, any person or persons of any class or description as respects

- (a) the provision by means of or in relation to the Applicable Systems of any telecommunication service in fulfilment of an obligation imposed by this licence; or
- (b) the granting of permission to provide Connection Services by means of the Applicable Systems.

PROHIBITION ON CROSS-SUBSIDIES

18.1 Unless required or authorised to do so by the conditions of this Licence, the Licensee shall, except where the Director agrees otherwise, neither:

- (a) make any transfer from the Systems Business for the purposes of -
 - (i) the Apparatus Supply Business; or
 - (ii) the Apparatus Production Company; or
 - (iii) the provision of mobile radio services for a consideration which is less than full cost; nor
- (b) make any transfer from the Apparatus Supply Business for the purposes of -
 - (i) the Apparatus Production Company; or
 - (ii) the provision of mobile radio services for a consideration which is less than full cost for so long as the supply of telecommunication apparatus by that Business constitutes a monopoly situation within the meaning of section 6 of the Fair Trading Act 1973.

18.2 In this Condition:

"Systems Business" means the following activities taken together:

- (a) the running of the Applicable Systems;
- (b) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of any apparatus comprised or to be comprised in those Systems;
- (c) without prejudice to the generality of sub-paragraph (a) the Bringing into Service of any item of telecommunication apparatus connected or to be connected to any of the Applicable Systems whether comprised in any of those Systems or not; and

- (d) without prejudice to the generality of sub-paragraph (a) the conveyance or switching of messages by means of any of the Applicable Systems; and

"Apparatus Supply Business" means the following activities taken together:

- (a) the supply of any telecommunication apparatus neither comprised nor to be comprised in the Applicable Systems;
- (b) the provision of any telecommunication services, not being services comprised in the Systems Business, consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of any telecommunication apparatus;

"Apparatus Production Company" has the same meaning as in Condition 21; and

"Bringing into Service" has the same meaning as in Condition 20.

and for the purposes of this paragraph "supply" and "provision" include supply or provision in the course of one business of the Licensee for the purposes of another such business notwithstanding that there is no supply or provision to any other person.

ACCESS CHARGES

19.1 Notwithstanding the prohibitions in Conditions 17 and 18 and without prejudice to the Licensee's other powers to impose charges in any circumstances or to organise its internal finances in any way the Licensee may impose upon the Operator of a Connectable System who provides Connection Services to others a charge (an "Access Charge") for the provision of telecommunication services by means of one of the Applicable Systems provided that all the conditions set out in paragraph 19.2 are fulfilled.

19.2 The said conditions are that;

- (a) the charge, or the method adopted for determining the charge, is the same for all Operators of systems by means of which Connection Services are provided;
- (b) the Director has approved the charge or the method adopted for determining the charge; and
- (c) the Licensee has made arrangements which as nearly as practicable secure that:
 - (i) all persons to whom there are provided by means of an Applicable System services, for which charges would have been levied on an Operator under paragraph 19.1 if they had been provided by means of a Connectable System, are required to pay charges at least equal to the charges which would have been so payable; and
 - (ii) the estimated proceeds of the charges referred to in 19.1 and 19.2(c) (i) are used exclusively to defray costs incurred in providing services or supplying apparatus in accordance with Conditions 6, 11 and 31 to 34 and losses in respect of providing services under Condition 2.

SEPARATION OF CERTAIN ACTIVITIES

20.1 This Condition applies for the purpose of ensuring that the Licensee establishes as soon as reasonably practicable and in any event not later than 1 April 1987 accounting and reporting arrangements sufficient to enable the Licensee's finances in relation to the Systems Business and the Apparatus Supply Business to be assessed and reported on separately both from each other and from the other activities of the Licensee.

20.2 The Licensee shall:

- (i) maintain accounting records in such a form that the activities of the Systems Business and the Apparatus Supply Business are separately identifiable or separately attributable in the books of the Licensee;
- (ii) prepare in respect of each complete financial year of the Licensee or of such lesser periods as the Director may specify but not more frequently than quarterly, accounting statements setting out the costs (including capital costs), revenue and financial position of each of those businesses and including a reasonable assessment of the assets employed in and liabilities attributable to each of them;
- (iii) procure in respect of each of those accounting statements prepared in respect of a complete financial year of the Licensee a report by the Licensee's Auditor stating whether or not in his opinion that statement is adequate for the purposes of this Condition; and
- (iv) deliver to the Director a copy of each of the accounting statements and of the reports relating thereto required under sub-paragraphs (ii) and (iii) above as soon as reasonably practicable and in any event not later than 6 months after the end of the period to which they relate.

20.3 In this Condition

"Apparatus Supply Business" has the same meaning as in Condition 18.2;

"the Applicable Systems" include any systems which the Director agrees should be treated as Applicable Systems for the purposes of this Condition;

"the Auditor" means the Licensee's auditor for the time being appointed in accordance with the requirements of the Companies Acts;

"Bringing into Service" means the process of connecting apparatus (including apparatus comprised in a telecommunication system) to a telecommunication system or the process of disconnecting such apparatus from such a system by means requiring the use of a tool and includes such testing of that apparatus, and any other apparatus to which it is or is to be connected, as is necessary for the purpose of ensuring the proper running of that apparatus when connected to that system; and

"Systems Business" has the same meaning as in Condition 18.2.

APPARATUS PRODUCTION

21.1 If the Licensee is, or before 1 July 1986 becomes, engaged in the business of production of telecommunication apparatus that business shall, as soon as reasonably practicable and in any event not later than 1 July 1986 be transferred to a subsidiary company or companies ("the Apparatus Production Company") of the Licensee (unless it is transferred to some other person not later than that date); the Licensee shall not after that date engage in any such business.

21.2 The Apparatus Production Company shall not engage in the business of running telecommunication systems.

21.3 Where for the time being:

- (i) the Director determines that the Licensee is a Monopoly Purchaser in the United Kingdom in relation to telecommunication apparatus of any particular description;
- (ii) the Director is of the opinion, after considering any representations from the Licensee that in the interests of promoting competition the Licensee ought not to acquire apparatus of that description from the Apparatus Production Company unless it has complied with the open tender procedures specified in paragraph 21.4 below; and
- (iii) the Director so notifies the Licensee.

then the Licensee shall not acquire any such apparatus from the Apparatus Production Company for the purpose of its business in the United Kingdom unless it has complied with that procedure in relation to that apparatus, except with the consent of the Director.

21.4 Compliance with the open tender procedures requires the Licensee in accordance with a procedure adopted after consultation, the Director from time to time:

- (a) to publish a notice giving particulars of the proposed acquisition of apparatus sufficient for the purposes and the date by which it is required and inviting any person to offer to supply that apparatus accordingly; and
- (b) to give due consideration to any offers made.

21.5 Without prejudice to the Director's duties under section 3 of the Act the Director shall when exercising hisd powers under this Condition have regard insofar as he may do so to the interests of the Licensee, the shareholders in the Licensee and the Licensee's employees.

21.6 In this Condition:

"production" of apparatus includes, unless in any case the Director rules otherwise,

- (i) assembly of apparatus; and
- (ii) refurbishment or reassembly of apparatus

at a place where it is not normally connected to a telecommunication system;

"subsidiary" means a subsidiary within the meaning of section 154 of the Companies Act 1948; and

"monopoly purchaser" in relation to apparatus of any description means a person in relation to whom there exists a monopoly situation within the meaning of any of the provisions of section 6 of the Fair Trading Act 1973 in respect to the supply to him (whether alone or taken with others) of apparatus of that description.

21.7 Nothing in this conclusion prevents any person from engaging in research and development or the production of prototypes or samples or of apparatus exclusively produced for the purpose of being tested; and nothing in this condition prevents the Apparatus Production Company or the Licensee from producing apparatus in quantities which are not significant or which do not significantly affect competition in commercial activities connected with telecommunications in the United Kingdom provided that the Licensee gives to the Director as soon as reasonably practicable after the end of each financial year a general description of the production of such apparatus in the course of that year and the Director does not rule that any such production is to be treated as production for the purpose of this Condition.

Condition 22

PROHIBITION OF PREFERENTIAL TREATMENT

22.1 If the Licensee habitually provides any service or makes any arrangement in any area whereby:

- (a) a person normally engaged in the Systems Business incidentally to the carrying on of that Business -
 - (i) delivers telecommunication apparatus for connection to any of the Applicable Systems; or
 - (ii) connects such apparatus to Network Termination and Testing Apparatus forming part of the Applicable Systems; or

- (b) a person normally engaged in the Apparatus Supply Business incidentally to the carrying on of that Business -
 - (i) arranges for the installation by the Systems Business of a telecommunication line; or
 - (ii) arranges for the provision of telecommunication services by the Systems Business by means of or in relation to a line so installed

then the Licensee shall ensure to the satisfaction of the Director if required by him to do so, that a person carrying on a business similar to the Apparatus Supply Business in that area has a reasonable opportunity to avail himself of those services or to make such arrangements on equivalent charges and terms for the purpose of that person's business, subject to the right of the Licensee to impose such conditions and additional terms upon that person as are reasonably necessary to protect the Licensee in all the circumstances.

22.2 In this Condition "area" means any of the Licensees "telephone areas" for the time being or such other equivalent management unit.

ALTERATIONS TO THE APPLICABLE SYSTEMS

1 The Licensee shall from time to time unless such an emergency arises as requires the Licensee to act otherwise inform the Director and provide him with such additional information as he may reasonably require about:

- (a) any general proposals for changes to the Applicable Systems or to any apparatus comprised therein or to any stored commands or protocol, which the Licensee might reasonably anticipate from the facts known to it would or might when made have the effect of requiring persons:
 - (i) running any Connectable System which is or is to be connected to the Applicable Systems;
 - (ii) connecting telecommunication apparatus to the Applicable Systems; or
 - (iii) producing or supplying telecommunication apparatus or telecommunication systems for connection to the Applicable Systems without becoming comprised in them

materially to modify, or as the case may be replace or cease to produce, any item of telecommunication apparatus connected or to be connected to any of the Applicable Systems; and

- (b) the procedures established and implemented by the Licensee for giving advance notice of such changes.

2 In this condition "modify" means any alteration to telecommunication apparatus or telecommunication systems not comprised in any of the Applicable Systems or to the protocols (including message formats) or stored commands in such apparatus which may be necessary to ensure that any messages conveyed or to be conveyed by means of any of the Applicable Systems are transmitted, or as the case may be are received, in a form or manner capable of being properly conveyed by the Applicable Systems.

PRICES TO BE CHARGED BY THE LICENSEE FOR CERTAIN SERVICES

24.1 The Licensee shall secure that the prices charged by it for the provision of the Relevant Services specified in paragraph 24.2 are such that the Percentage change in Relevant Prices determined in accordance with paragraph 24.3 does not exceed in any period between the dates on which the Licensee's annual accounts are audited being a period ^{ending} before 31 July 1989 the RPI-X Percentage determined in accordance with paragraph 24.4.

24.2 The Relevant Services are:

- (a) the connection of customers to their local exchange for voice telephony;
- (b) the supply and maintenance of telephone lines connecting customers to their local exchange;
- (c) the conveyance of voice telephony messages within a local charge area; and
- (d) the conveyance of voice telephony messages within a local charge area being messages sent from a Public Call Box;

24.3 The Percentage change in Relevant Prices in any period shall be calculated by taking the change in any

price for any relevant service in that period, multiplying that change by the revenue received in respect of the service for which that price is charged in the most recent financial year in respect of which there are audited annual accounts, dividing the numbers so produced in each case by the price charged immediately before the beginning of the period mentioned in paragraph 24.1 and taking the aggregate of the results, expressed as a percentage of the revenue received in respect of the relevant services in that financial year. The percentage change may be determined by the application of the following formula:

$$P.C. = 100 \cdot \frac{\sum_i R_{i0} \left(\frac{P_{it} - P_{it-1}}{P_{it-1}} \right)}{\sum R_{i0}}$$

where P.C. = percentage change in relevant prices

R_i = revenue received in respect of the i th service in the most recent financial year

P_i = the price charged for the i th service.

24.4 (a) The RPI-X Percentage means the percentage of the Retail Prices Index at the beginning of the period mentioned in paragraph 24.1 by which that index at the end of that period exceeds that index at the beginning of that period,

reduced by x; but

- (b) if at the end of any such period the aggregate of the percentage changes in Relevant Prices for the preceeding periods is exceeded by the aggregate of the RPI-X percentages for those periods, determined in accordance with paragraph (a) above, the RPI-X percentage shall be increased by the amount of that excess.

24.5 Where the Licensee makes a material change (other than as to the prices charged) in any of the Relevant Services, this Condition shall have effect subject to such reasonable adjustment as the Director considers appropriate in the circumstances.

24.6 The Licensee shall as soon as practicable after the date of the auditing of his annual accounts for any financial year:

- (a) notify the Director in writing of the Percentage change in Relevant Prices which has taken place since the auditing of the accounts for the preceeding financial year and publish that Percentage Change in such reasonable manner as the Director specifies; and
- (b) as soon as reasonably practicable thereafter inform the Director of the amount of revenue received in that year in respect of each of the relevant services for which a discrete price has been charged.

24.7 "Retail Prices Index" means the index of retail prices compiled by the Department of Employment in respect of all items excluding seasonal foods.

NOTE

The possibility of adding Trunk call services to the Relevant Services is still being studied. The value of 'x' will be determined near to the date when the licence comes into force taking account of circumstances at that time.

Further details relating to the application of the RPI-X formula have yet to be determined.

CHARGES FOR THE MAINTENANCE OF CERTAIN EXCHANGE LINES

25.1 Subject to paragraph 25.2, the Licensee shall from time to time until a date not later than 1 July 1989 publish a scale of charges for the provision of service consisting of the maintenance and adjustment of any exchange line to which this Condition relates and that scale of charges shall be uniform throughout the Licensed Area.

25.2 Nothing in this Condition shall preclude that scale from including provision for charges at different rates than are charged in respect of the generality of exchange lines to which this Condition relates where a customer contracts with the Licensee for the provision of service of a different quality than is provided in respect of the generality of exchange lines to which this Condition relates provided always that the different quality service is available throughout those parts of the Licensed Area where there is a reasonable demand for it.

25.3 The exchange lines to which this Condition relates are telecommunication lines and the Network Terminating and Testing Apparatus connected to such lines run by the Licensee which connect telephone exchanges run by the Licensee to Served Premises within the Licensed Area for the purpose of providing simple voice telephony services at those premises in circumstances where only one such line is connected to the served premises.

Footnote

The Government has given BT an assurance that, in the event of "simple Resale" of private circuits being permitted by it before 1 July 1989, arrangements will be made to remove this condition from this Licence contemporaneously with the introduction of "simple Resale". Further consideration needs to be given to the definition of "simple Resale".

CHARGES FOR THE INSTALLATION OF CERTAIN EXCHANGE LINES

26.1 The Licensee shall from time to time until a date not later than 1 July 1989 publish a scale of charges for the installation of any exchange line to which this condition relates and shall apply it uniformly where the installation takes less than 100 man hours, or such other quantity as the Director may from time to time agree.

26.2 The exchange lines to which this condition relates are those exchange lines of the description specified in Condition 25.3 which are normally classified as residential lines.

CODE OF PRACTICE FOR CONSUMER AFFAIRS

27.1 The Licensee shall prepare in consultation with the Director and shall publish not later than three months after the date when this Licence enters into force a Code of Practice setting out guidance to the Licensee's employees and its customers in respect of any disputes and complaints relating to the provision by the Licensee of telecommunication services by means of, or in relation to, any of the Applicable Systems. The Licensee shall consult the Director not less frequently than once every 5 years about the operation of the Code of Practice.

ARBITRATION OF DISPUTES WITH CUSTOMERS

28.1 The Licensee shall include in the standard terms and conditions on which it provides telecommunication services provisions giving persons who have entered into contracts with it for the provision of telecommunication services by the Licensee by means of, or in relation to, any of the Applicable Systems the opportunity to have referred to an independent inexpensive arbitration procedure, instead of to a court of law, any dispute relating to the provision of those services to those persons which does not involve a complicated issue of law or a greater sum than the Director may from time to time agree. The arbitration procedures and the method of appointment of arbitrators shall be subject to consultation with the Director and the Licensee shall consult the Director not less frequently than once every 5 years about the operation of the arbitration procedures.

BODIES RECOGNISED TO BE REPRESENTING THE INTEREST OF CONSUMERS

29.1 The Licensee shall give due consideration to any matter which relates to:

- (a) telecommunication services provided by means of or in relation to any of the Applicable Systems;
- (b) telecommunication apparatus supplied by the Licensee; or
- (c) the connection to any of the Applicable Systems
 - (i) of any system run by any person other than the Licensee; or
 - (ii) any telecommunication apparatus

and which is the subject of a representation made to the Licensee by an organisation whose name is included for the time being on any list of bodies sent to the Licensee by the Director being a list of bodies recognised by the Secretary of State under section 25 of the Act as representing the interests of consumers and other users of such telecommunication services or apparatus.

29.2 The Licensee shall, if requested by the Director or if it sees fit, furnish to the Director particulars of any matter considered by the Licensee under this condition or a digest of activities undertaken in any period in pursuance of this condition.

METERING

30.1 After the date upon which this Licence comes into force, or such later date as arrangements have been made under section 23 of the Act for the approval of meters of a particular kind or description the Licensee shall not use in connection with any of the Applicable Systems any meter which has not been approved in accordance with the arrangements relating to it.

30.2 The Licensee shall:

(i) use its best endeavours at all times to ensure the accuracy and reliability of the meter when so used;

(ii) keep such records as the approval in respect of each meter requires of

(a) the performance of the meter when so used; and

(b) other matters relating to the meter.

(iii) permit such persons as the Secretary of State may from time to time appoint to inspect the manner in which the meter is being used by the Licensee and to assess its accuracy, reliability and conformity to any standard for the time being approved for the purposes of section 23 of the Act in such fashion as they may reasonably request.

(iv) upon the written request of the Secretary of State or any person so appointed, furnish such information as may reasonably be required for the purpose of enabling the functions of the person making the request to be carried out.

Condition 31

SUPPLY AND CONNECTION OF APPARATUS FOR THE DISABLED

31.1 The Licensee shall consult the Director from time to time about the arrangements made, or to be made, by the Licensee for

- (a) the supply of telecommunication apparatus designed or adapted to meet the reasonable demands of the disabled; and
- (b) the connection to the Applicable Systems and maintenance of telecommunication apparatus designed or adapted to assist the disabled to obtain telecommunication services

and shall, if requested by the Director to do so, participate in the work of any advisory body established by the Director for the purpose of considering the special telecommunications requirements of the disabled.

SPECIAL TELEPHONES FOR THE HEARING IMPAIRED

32.1 The Licensee shall supply in such a way as to meet all reasonable demands for their telephone instruments of the following descriptions

- (a) telephone instruments capable of being inductively coupled to hearing aids designed for use in conjunction with such telephone instruments; and
- (b) telephone instruments incorporating sound amplification facilities.

32.2 This condition shall be deemed to be satisfied if the Licensee supplies either one type of telephone instrument which meets both descriptions or two types of telephone instruments each of which meets one description.

Condition 33

SPECIAL FACILITIES FOR THE HEARING-IMPAIRED USING PUBLIC CALL BOXES

33.1 The Licensee shall notify to the Director, and shall implement, a programme for installing in all public call boxes apparatus enabling persons using hearing aids designed for use in conjunction with telephones to use such hearing aids when call box services are provided to them at public call boxes.

33.2 In this condition "public call box" has the same meaning as it has in condition 11.

DIRECTORY ENQUIRY SERVICES FOR THE BLIND AND PERSONS WITH CERTAIN OTHER DISABILITIES

34.1 If the Licensee introduces charges for or in connection with directory enquiry services, it shall continue to provide facilities for all persons who are recognised by the Director to be prevented by reason of blindness or other disability from using printed telephone directories to obtain directory enquiry services free of charge. If that is not practicable the Licensee shall provide appropriate reasonable compensation in respect of charges that may have been paid.

34.2 Nothing in this condition shall prevent the Licensee from providing directory enquiry services in accordance with terms and conditions designed to prevent persons who are capable of using printed directories from obtaining such services free of charge or from obtaining such compensation.

34.3 In this condition "directory enquiry services" has the same meaning as in condition 3.

PROHIBITION ON LINKED SALES

35.1 The Licensee shall not make it a condition of providing any telecommunication service by means of or in relation to any of the Applicable Systems, or of supplying any telecommunication apparatus for connection to any of the Applicable Systems, or of connecting any other system or apparatus to any of the Applicable Systems, or of doing any of those things on terms more favourable than would otherwise be offered, that any relevant person should acquire from the Licensee or any other person specified or described by the Licensee:

- (a) any telecommunication service other than the telecommunication service requested save where that service cannot be provided without the provision of another telecommunication service; or
- (b) any telecommunication apparatus not incorporated in the Applicable Systems save where the telecommunication service requested cannot otherwise be provided.

35.2 Notwithstanding paragraph 35.1:

- (i) the Licensee may impose such terms and conditions as are described in paragraph 5 of condition 13, except where a Connectable System is run under a licence which includes provisions requiring that the apparatus comprised within that system should be approved under section 21 of the Act;
- (ii) the Licensee may impose such reasonable terms and conditions as are necessary in connection with the carrying out of maintenance by the Licensee where a Connectable System connected or to be connected to the Applicable System is run under a licence requiring that apparatus comprised within that Connectable System should be maintained by persons of a description including the Licensee if it is, or is to be kept, so connected and the Operator requests

that such maintenance be provided by it.

- (iii) the Licensee may impose such other conditions of the kind referred to in paragraph 35.1 as the Director may from time to time agree are necessarily incidental to the provision of the telecommunication service requested by the relevant person.

35.3 In this Condition:

"relevant person" means a person:

- (a) who requests that a telecommunication service be provided by means of or in relation to the Applicable System, or for whom or on whose behalf such a telecommunication service is provided; or
- (b) who requests that telecommunication apparatus be supplied or to whom or on whose behalf such apparatus is supplied; or
- (c) who requests that one or more telecommunication systems or as the case may be one or more items of telecommunication apparatus be connected to an Applicable System or for whom or on whose behalf such a system or such apparatus is connected to an Applicable System; and

"licence" means a licence granted or having effect as if granted under section 7 of the Act.:

PROHIBITION OF CERTAIN EXCLUSIVE DEALING ARRANGEMENTS

36.1 The Licensee shall not, except with the written consent of the Director, make the acquisition of any telecommunication apparatus of a particular description by the Licensee or any member of its group conditional upon the agreement of the supplier:

- (a) to supply telecommunication apparatus of a different description to the Licensee or to any other person; or
- (b) not to supply apparatus of a different description or not to provide any telecommunication service to any person.

36.2 If the Director is satisfied that persons, who are not genuinely willing to give to the Licensee the sole right to supply to customers apparatus supplied by those persons, are being so required then the Director may require the Licensee to comply with the condition in paragraph 36.3.

36.3 The said condition is that the Licensee shall not, except with the written consent of the Director, make the acquisition of telecommunication apparatus, or of telecommunication apparatus specified by the Director or of telecommunication apparatus of a description specified by the Director, by the Licensee or any member of its Group from any person or any persons specified by the Director or persons of a description specified by the Director conditional upon the agreement of the supplier not to supply to any other person apparatus of the same description as that to be supplied to the Licensee.

36.4 Notwithstanding paragraph 36.1 above or the imposition of the condition in paragraph 36.3 above the Licensee shall be free:

- (i) to agree with any person that that person will supply to the Licensee alone telecommunication apparatus of any description which is distinguishable by its design, marking or some similar attribute from other apparatus of the same description and is or is intended to be thereby associated with the Licensee; or

- (ii) to require that other telecommunication apparatus should be supplied or other telecommunication services provided with or in connection with any service to which sub-paragraph (a) of this Condition relates where the supply of that other apparatus or that other service is necessarily incidental to the supply of the apparatus, or as the case may be to the provision of the service, to which the said sub-paragraph (a) relates.

REQUIREMENT TO PROVIDE ITEMISED INFORMATION ETC

37.1 If the Licensee supplies to any other person any item of telecommunication apparatus, other than apparatus comprised within the Applicable Systems, as part of a transaction also involving the provision of any telecommunication service:

- (a) the charges for the provision of each of those services shall be not less than the charges published or notified in accordance with Condition 16 or as the Director may agree in writing in accordance with that Condition; and
- (b) the charges for telecommunication services shall be specified in any quotation and in any invoice relating to that transaction separately from any charges relating to any other item provided or supplied.

37.2 The Licensee shall not be obliged under paragraph 37.1(b) to specify charges for telecommunication services separately in invoices until it has installed the necessary billing systems.

CONFIDENTIALTY OF CUSTOMER INFORMATION

38.1 The Licensee shall take all reasonable steps to ensure that those of its employees who are engaged in the Systems Business observe the provisions of a Code of Practice which:

- (a) specifies the persons to whom such employees may not disclose information about a customer of the Licensee acquired in the course of the Systems Business without the consent of that customer; and
- (b) regulates the information about any such customer and any such service which may be disclosed without his consent.

38.2 The Licensee shall within three months of the date of this Licence submit a draft of the Code of Practice to the Director for his approval and if the Licensee and the Director fail to agree on the provisions of the Code the Licensee shall adopt a Code of Practice prepared by the Director.

38.3 This condition is without prejudice to the duties at law of the licensee towards its customers.

PAYMENT OF FEES

39.1 The Licensee shall pay the following amounts to the Secretary of State at the times stated:

- (a) on the grant of this licence the sum of [], and
- (b) on each anniversary of such grant, a renewal fee which shall represent a fair proportion, to be determined each year by the Director according to a method that has been disclosed to the Licensee, of the amount voted by Parliament to meet the estimated costs incurred in any year by the Director in the regulation and enforcement of telecommunication licences and by the Monopolies and Mergers Commission following licence modification references under section 13 of the Act, save always that the renewal fees shall not exceed .05% of the annual turnover of the Licensee's Systems Business in the year in respect of which the fee is paid.

REQUIREMENT TO PROVIDE INFORMATION TO THE DIRECTOR

40.1 The Licensee shall furnish to the Director, in such manner and at such times as the Director may request, such documents, accounts, estimates, returns or other information as the Director reasonably requires for the purpose of exercising the functions assigned or transferred to him by or under Parts II and III of the Act, provided however that the Licensee shall not be required to furnish to the Director any document, account, estimate, return or other information which it is not reasonable for the Director to require having regard to the burdens which will be imposed upon the Licensee in providing it and to the purpose for which the Director requires it.

Condition 41

PRE-NOTIFICATION OF JOINT VENTURES

41.1 The Licensee shall notify the Director not later than 30 days before the taking effect of any of the agreements or arrangements of the descriptions mentioned in paragraph 41.2 below giving particulars of those agreements.

41.2 Those descriptions of agreements and arrangements are:-

- (i) an agreement with any person for the establishment or control of any body corporate for the purpose of the running of a telecommunication system which requires a licence under the Act or for the purpose of providing telecommunication services in the United Kingdom which necessarily involve the running of such a system or for the purpose of production of telecommunication apparatus for supply in the United Kingdom where that production would lead to a monopoly situation which would not otherwise exist in relation to the supply of telecommunication apparatus of any description in the United Kingdom;
- (ii) an agreement for the establishment of a partnership for any of those purposes and in those circumstances;
- (iii) any other agreement or arrangement in the nature of a joint venture for the purpose of running a telecommunication system which requires a licence under the Act or for the purpose of providing telecommunication services in the United Kingdom which necessarily involve the running of such a system.

41.3 Paragraph 42.2 (i) and (ii) apply in relation to an agreement for the establishment or control of any body when the Licensee has or is to have not less than 20% of the voting power in any organ controlling that body.

41.4 For the purposes of this Condition a monopoly situation shall be taken to exist where such a situation would be taken to

exist for the purpose of any of the provisions of section 6 of the Fair Trading Act 1973 but with the substitution of the words "one fifth" for the words "one quarter" whenever they appear in that section.

41.5 In any case where circumstances beyond the Licensee's control require him to enter into an agreement or arrangement, if he is to enter into it at all, without having made a notification in accordance paragraph 41.1 he shall notify the Director in accordance with that paragraph as soon as reasonably practicable.

41.6 In any case where the Licensee has notified the Director of any proposal to enter into such an agreement or arrangement and given to him such particulars as he has required for the purpose the Director may waive the requirements of this Condition.

LIMITATIONS ON LICENCE OBLIGATIONS

42.1 The obligations to provide any voice telephony services under this Licence shall not apply:

- (a) where the service requested cannot be provided on account of physical, topographical or other natural obstacles; or
- (b) where provision of the service requested would expose any person engaged in their provision to undue risk to health or safety; or
- (c) where the Licensee is unable to obtain (either because it has not been developed or for some other reason beyond the Licensee's control) anything necessary to provide a service of the quality or standard required by the person who requests the provision of the service and, in the event of dispute, the Director's decision as to whether anything is necessary shall be final; or
- (d) where the person to whom the Licensee would otherwise be under an obligation to provide any of those services requests a service at a place in which the apparatus necessary to provide that service in that area has not been installed (or in which the installation of such apparatus has not been completed) or as the case may be such apparatus has not been adapted or modified to make it capable of providing the service of the kind requested or the trained manpower is not available in that area, provided that in every case where the Licensee declines to provide a service to which this sub-paragraph relates it shall have published, or furnished, or within 28 days (or such longer period as the Director considers reasonable) following receipt by it of the request that service be provided shall have furnished to the Director, proposals for
 - (i) progressively installing or completing the installation or for the adaptation or the modification of the apparatus; or
 - (ii) the allocation of the trained manpowernecessary for the provision of that service in that area; or

(e) where the provision of the service requested is temporarily interrupted, suspended or restricted, either in the case of emergency or on account of any failure or malfunctioning of any apparatus forming part of the Applicable Systems by means of which the service is provided, provided that the Licensee takes steps to restore the service as swiftly as practicable; or

(f) where in the opinion of the Director it is impracticable in all the circumstances for the Licensee to provide the service requested at the time or place demanded.

42.2 The obligations to provide telecommunication services other than voice telephony services under this Licence shall not apply:

(a) where any of the circumstances described in 43.1(a) to (f) apply; or

(b) where the person to whom the Licensee would otherwise be under an obligation to provide any of those services requests a service at a place in an area in which the demand or the prospective demand for that service is not sufficient, having regard to the revenue likely to be earned from the provision of that service in that area, to meet the cost of the apparatus necessary to provide that service in that area, its installation and maintenance and of operating that apparatus so as to provide that service.

42.3 The Licensee shall not be obliged to connect, or to keep connected to the Applicable Systems, any telecommunication system or item of telecommunication apparatus or to provide telecommunication services by means of, or in relation to, that system or item of apparatus if the person in whose possession or control it is:

(a) has neither entered into a contract with the Licensee for the connection of that system or apparatus, or, as the case may be for the provision of such services, nor is deemed to have done so; or

(b) is, or gives the Licensee reasonable cause to believe that he may become -

(i) in breach of a contract with the Licensee for the provision of telecommunication services supplied to him by the Licensee; or

(ii) in default in regard to any debt or liability owed by him to the Licensee; or

(c) uses that item of apparatus or permits it to be used for any illegal purpose; or

(d) has obtained or attempted to obtain any telecommunication service from the Licensee by corrupt, dishonest or illegal means at any time.

42.4 Nothing in this Licence shall prevent the Licensee from withdrawing from, or declining to provide to, any person any service which the Licensee has notified the Director that it is providing in a limited area, or to a limited class of customers in such an area, for the purpose of evaluating the technical feasibility of, or the commercial prospects for, that service.

42.5 Nothing in this Licence shall require the Licensee to supply any apparatus or provide any service, or supply or provide any apparatus or service of any particular class or description, if he supplies or provides instead apparatus or a service, or apparatus or service of a class or description, which satisfied the purposes of that requirement at least to the same extent.

42.6 This Condition shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any other condition of this Licence.

FORCE MAJEURE

43.1 The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under this Licence if and to the extent that

- (i) such failure is the result of any matter beyond the control of the Licensee whether the result of fire, flood, explosion, accident, riot, the act of any national, state or municipal authority or international organisation, strike or other industrial action, trade dispute or^{of} any other matter; and
- (ii) the Licensee is taking all reasonable steps to secure that the things which it is required to do are done.

DEFINITIONS AND INTERPRETATIONS

1 In these Conditions unless the context otherwise requires:

- (a) "message" means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;
- (b) the "Licensed Area" means the United Kingdom other than the area in which the City of Kingston upon Hull was licensed to run telecommunication systems under a licence granted on ;
- (c) the "Act" means the Telecommunications Act 1984;
- (d) the "Systems Business" and the "Apparatus Supply Business" have the same meanings as in Condition 18;
- (e) the "Apparatus Production Company" has the same meaning as in Condition 21;
- (f) "Access Charge" has the same meaning as in Condition 19;
- (g) "Operator", "Connectable System" and "Connection Services" have the meaning ascribed to them in Condition 13;
- (h) "Applicable Systems", "Network Connection Point", "Network Terminating and Testing Apparatus", "Network Connection Apparatus" and "Served Premises" have the meaning ascribed to them in Schedule 1;
- (i) "Public Call Box" and "Call Box Services" have the meanings ascribed to them in Condition 11;
- (j) "maintenance" means in relation to any apparatus:
 - (a) carrying out repairs;
 - (b) verifying or ensuring that:
 - (i) the apparatus performs in accordance with its specification or as may be required by the Licensee of the Connectable System in which such apparatus is incorporated;
 - (ii) the apparatus continues to comply with any condition contained in an approval of that

apparatus under section 21 of the Act^{or} in the designation of a standard under that section;

(iii) any terms or conditions regarding the apparatus or its connection or use that may be stipulated by the Licensee and which must be observed if the Connectable System is or is to remain connected to the Applicable System are observed;

(c) any activity involving the removal of the outer cover of the apparatus or alteration of the apparatus including alterations of any stored commands capable of affecting the compliance of the apparatus with the technical requirements and conditions mentioned in (b) above; or

(d) any activity involving the use of any test apparatus or other equipment not forming a permanent part of the apparatus;

but shall not include operations incidental to the routine use of the apparatus to transmit, convey, switch or receive messages;

(k) "mobile radio service" means a service to a person using apparatus which is either mobile or portable;

(l) "Costs" includes a reasonable profit;

(m) "Subsidiary" has the same meaning as in section 154 of the Companies Act 1948;

2 The Interpretation Act shall apply for the purpose of interpreting these Conditions as if they were an Act of Parliament.

3 Any word or expression used in these Conditions shall unless the context otherwise requires have the same meaning as it has in the Act.

4 Except when the context otherwise requires where any thing or matter falls to be done or controlled by a subsidiary of the Licensee which would fall to be governed by this licence if that matter were done or controlled by the Licensee, the Licensee shall secure that that subsidiary shall comply with the provisions of this Licence in the same manner in all respects as the Licensee is required to comply.

Footnote

The Licence will need to contain appropriate transitional provisions to protect persons with legal relations with British Telecommunications existing on the Appointed Day.

PART 3: REVOCATION

1 The Secretary of State may at any time revoke this Licence by 30 days' notice in writing given to the Licensee at its registered office in any of the following circumstances:

- (a) if the Licensee agrees in writing with the Secretary of State that this Licence should be revoked;
- (b) if any amount payable under this Licence is unpaid 30 days after it becomes due and remains unpaid for a period of 14 days after the Secretary of State notifies the Licensee that the payment is overdue, such notification not to be given earlier than the sixteenth day after the day on which the payment became due;
- (c) if the Licensee fails to comply with an Order made by the Director under section 16 of the Act and that Order is not subject to proceedings for review and such failure is not rectified within 3 months after the Secretary of State has given notice in writing of such failure to the Licensee;
- (d) if, pursuant to section 57 of the Act the property, rights and liabilities of the Licensee become property rights and liabilities of a company nominated for the purposes of that section by the Secretary of State ("the successor company") and the successor company -
 - (i) is unable to pay its debts (within the meaning of section 223 of the Companies Act 1948), convenes any meeting with its creditors generally with a view to the general readjustment or re-scheduling of its indebtedness or makes a general assignment for the benefit of its creditors generally; or
 - (ii) enters into receivership or liquidation; or
 - (iii) ceases to carry on its business; or
 - (iv) if the successor company or any other person takes any action for voluntary winding-up or dissolution of the successor company, or if the successor company 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 Secretary of

State) or a receiver, trustee or similar officers of the successor company or of all or any material part of the revenues and assets if it is appointed or if any order is made for the compulsory winding-up or dissolution of it;

2 For the purposes of sub-paragraph (1)(d)(i) of this paragraph, in construing the terms of paragraph (a) of section 223 of the Companies Act 1948 the figure of "£200" therein shall be deemed to be replaced by "£250,000" and the said paragraph (a) shall not apply if the demand therein referred to is being contested in good faith by the successor company with recourse to all appropriate measures and procedures, whether legal or otherwise, or if the demand is satisfied prior to the expiry of the notice from the Secretary of State.

PART 4: AUTHORISATION TO CONNECT OTHER SYSTEMS AND APPARATUS
TO THE APPLICABLE SYSTEMS AND TO PROVIDE TELECOMMUNICATION
SERVICES BY MEANS OF THE APPLICABLE SYSTEMS

1 Nothing in this licence removes any need to obtain any other licence that may be required under any other enactment but, subject to that limitation, this licence authorises:

- (a) the connection to any Applicable System of:
 - (i) any other Applicable System;
 - (ii) any telecommunication system in a country or territory outside the United Kingdom except a telecommunication system which the Secretary of State has notified the Licensee should not, or as the case may be should cease to, be connected to the Applicable System;
 - (iii) any telecommunication system run by the Secretary of State or a Northern Ireland Department;
 - (iv) any telecommunication system or telecommunication apparatus on any vessel, hovercraft or offshore installation;
 - (v) any telecommunication system in the licensed area the licence for which authorises it to be connected to one or more of the Applicable Systems;
 - (vi) any telecommunication system in the Hull area run by the Kingston upon Hull City Council;
 - (vii) telecommunication apparatus of every description which is incorporated into an Applicable System;
 - (viii) any telecommunication apparatus not incorporated into any of the Applicable Systems which is for the time being approved for connection to any of the Applicable Systems in accordance with section 21 of the Act; and
- (b) the provision by means of the Applicable Systems of telecommunication services of every description except land mobile radio telecommunication services.

PART 5

EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE
TELECOMMUNICATIONS CODE

PROTECTION OF THE ENVIRONMENT

Conservation Areas

1.1 The Licensee shall install underground all lines installed in a designated conservation area and the City of London after the date on which this licence comes into effect and shall not install any poles in those areas after that date. This condition shall not prevent the installation of:

- (a) a line required temporarily for the purpose of emergency works;
- (b) an overhead service line flown from a pole which was installed before that date or under sub-paragraphs (d) or (e) below, unless that line is of a larger diameter than that of the majority of overhead service lines flown from poles in the same locality;
- (c) any other line replacing an existing line provided that the replacement line does not exceed the diameter of the line it replaces;
- (d) a replacement pole not in a substantially different position from the pole it replaces;
- (e) any pole (other than one mentioned in sub-paragraph (d) above) in a street or in neighbouring land where overhead service lines attached to poles already exist in that street or neighbouring land to provide a telecommunication service.

1.2 Before installing a pole under Condition 1.1(e) above the Licensee shall give to the appropriate local planning authority written notice of his intention to do so describing the proposed works and shall consider any written

comments or suggestions made by the authority within 28 days of the giving of the notice.

1.3 In this condition "a designated conservation area" means a conservation area designated under section 277 of the Town and Country Planning Act 1971 and the appropriate local planning authority in relation to such a conservation area is the local planning authority for that area within the meaning of section 1 of the Act.

National Parks etc

2.1 Subject to Condition 2.2 below, and except in the case of emergency works, before installing overhead telecommunication apparatus in National Parks, areas of outstanding natural beauty or sites of special scientific interest the Licensee shall give to the relevant authority written notice of its intention to do so describing the proposed works and shall consider any written comments or suggestions made by any such authority within 28 days of the giving of the notice. Where the Licensee decides that it would be inappropriate to modify the proposed works in the light of any such comments or suggestions he shall before installing the apparatus notify the relevant authority in writing of his reasons. The Licensee shall also comply with any direction given to him in writing by the Secretary of State from time to time relating to giving notice to and considering the comments of any other authority exercising functions under any enactment in relation to those areas or such other environmentally sensitive areas as may be specified therein.

2.2 The Licensee shall not be required to give notice pursuant to Condition 2.1 above where the apparatus installed consists solely of -

- (a) an overhead service line flown from a pole unless that line is of a larger diameter than that of the majority of overhead service lines flown from poles in the same locality, or
- (b) a replacement pole not in a substantially different position from the pole it replaces.

2.3 In this condition "National Parks" and "areas of outstanding natural beauty" mean areas designated as such under section 5 and section 87 respectively of the National Parks and Access to the Countryside Act 1949 and the relevant authority in relation thereto shall be the local planning authority for the area in question within the meaning of Section 1 of the Town and Country Planning Act 1971. "A site of special scientific interest" shall mean an area designated as such under section 28 of the Wildlife and

Countryside Act 1981 in which case the Nature Conservancy Council established under the Nature Conservancy Council Act 1973 shall be the relevant authority or an area in respect of which the Secretary of State has made an order under section 29 of that Act in which case the relevant authority shall be the Secretary of State.

Maintainable Highways

3.1 Except in the case of emergency works, before executing any works involving the breaking up of a maintainable highway in connection with the installation of any telecommunication apparatus in that highway the Licensee shall give to the appropriate highway authority (within the meaning of section 1 of the Highways Act 1980) written notice of his intention to do so describing the proposed works and shall consider any written comments or suggestions made by that authority within 8 days of the giving of the notice in the case of an overhead line or an underground service line and within 29 days of the giving of the notice in other cases.

3.2 For the avoidance of doubt it is hereby declared that condition 3.1 applies in addition to any obligations of the Licensee under the Public Utilities Street Works Act 1950 and any Order made under section 11(1) of the Telecommunications Act [1984].

Emergencies

4 Where the Licensee executes emergency works which would otherwise require prior notice under Condition 2 or 3 above he shall give to the relevant authority or highway authority as soon as practicable after the commencement of the works written notice describing the works.

Code of Practice

5 The Licensee shall prepare in consultation with the Secretary of State a code of practice on the installation of telecommunication apparatus not contained in a building and shall comply with a direction given to him in writing by the Secretary of State which requires him to follow that Code of Practice.

Interpretation

6 In Part 5 of this Licence:

- (a) the expressions "emergency works", "maintainable highway", "street" and "telecommunication apparatus" shall have the meanings assigned to them by paragraph 1 of Schedule 2 to the Act;

- (b) "line" shall have the meaning assigned by sub-paragraph (a) of the definition of "telecommunication apparatus" in paragraph 1 of that Schedule and "service line" shall mean any line placed or intended to be placed for the purpose of providing a service by means of a telecommunication system to or from any premises, as distinct from lines placed or intended to be placed for the general purposes of any such system.

SCHEDULE 1

THE APPLICABLE SYSTEM

1 The Applicable Systems are telecommunication systems of every description, provided that for a system to be an Applicable System it must satisfy each of the following conditions:

- (a) all the telecommunication apparatus comprised in the system and used for the purpose of running it is, to the extent that it is so comprised and used, run solely by the Licensee;
- (b) the system is one by means of which Messages (as defined below) are conveyed or are to be conveyed:
 - (i) from one Network Termination Point on one set of Served Premises to another such point on the same or a different set of such premises and no further;
 - (ii) from a Network Termination Point on Served Premises to a place which is not on Served Premises or from such a place to such a point and in either such case no further;
 - (iii) from one place which is not a Network Termination Point to another such place without passing through a Network Termination Point, where their conveyance is not a telecommunication service provided to another person or is a call box service; or
 - (iv) from a place in the UK to a ship or vice versa.
- (c) the System is not:
 - (i) a Connectable System;
 - (ii) a system run by the Licensee in the Hull Area unless it is one which -
 - (A) is run exclusively for the purpose of connecting any system run by the Kingston upon Hull City Council to the Applicable Systems, or

- (B) passes through that Area without being connected to any Network Termination Point within it other than a Network Termination Point which exists for the purpose of connecting the Applicable Systems to any system run by the Kingston upon Hull City Council; or
- (iii) a telecommunication system which conveys messages by means of wireless telegraphy, except where every wireless telegraphy station and every item of wireless telegraphy apparatus comprised within or connected to that system -
 - (A) provides a permanent or temporary fixed link and is installed in the licensed area; or
 - (B) is used exclusively for the purposes of providing Maritime Services.

2 In this Schedule:

- (a) "Network Termination Point" means the point within either an item of Network Terminating and Testing Apparatus or an item of Network Connecting Apparatus at which energy of any of the forms specified in section 4(1) of the Act is conveyed directly to or from apparatus not forming part of any of the Applicable Systems;
- (b) "Network Termination and Testing Apparatus" means an item of telecommunication apparatus comprised in a telecommunications system, installed in a fixed position on Served Premises the only functions of which are to enable -
 - (i) approved apparatus to be readily connected or disconnected;
 - (ii) the conveyance of messages between approved apparatus and the Applicable Systems;
 - (iii) the due functioning of any of the Applicable Systems to be tested; or
 - (iv) other functions exclusively related to the operation of the Applicable Systems to be performed;

- (c) "Network Connecting Apparatus" means an item of telecommunication apparatus which is not Network Termination and Testing Apparatus and which connects any of the Applicable Systems to apparatus comprised within a Connectable System run under a licence which is not granted either to all persons or to persons of a particular class;
- (d) "Served Premises" means a single set of premises in single occupation where apparatus has been installed by the Licensee for the purpose of providing telecommunication services at those premises;
- (e) "Connectable System" means;
- (i) a telecommunication system run under a licence granted, or having effect as if granted, under section 7 of the Act which permits the connection of the system to which the licence relates to an Applicable System; or
 - (ii) a telecommunication system in a country or territory outside the United Kingdom or run by an international organisation;
- (f) "Message" means anything falling within paragraphs (a) to (d) of section 4(1) of the Act;
- (g) "Maritime Services" means telecommunication services consisting in the conveyance of Messages between ships and any Network Termination Point or between ships and the Licensee;
- (h) "Fixed Link" means any apparatus or telecommunication system linking by wireless telegraphy any station for wireless telegraphy or wireless telegraphy apparatus which is neither mobile nor portable to any other such station or apparatus;
- (i) "the Hull Area" means the area within which the Kingston upon Hull City Council is authorised to run telecommunication systems under a licence dated
- (j) "Wireless Telegraphy Apparatus" and "Wireless Telegraphy Station" have the same meaning as in the Wireless Telegraphy Acts 1949 to 1967;

and in this Schedule any reference to any telecommunication system includes a reference to any part thereof.

Footnote

The definition of the Applicable System raises a number of complex technical and legal issues. Further work will be required on these issues in consultation with BT and those who run telecommunication systems.

CONFIDENTIAL

cc Mr. Mount

MR. TURNBULL

BRITISH TELECOMS DRAFT LICENCE

I enclose a note on the main provisions together with our comments. I understand from DTI officials that all they will be providing for the Prime Minister is an existing brief for Kenneth Baker which is essentially a prompt for speaking engagements.

I suggest that the Prime Minister should be invited to agree that the proposed statement on future competition policy on telecommunications should be circulated to Number Ten well in advance of its proposed release in November. At this stage in the public debate the other points on the licence could be noted unless the Prime Minister wishes to comment on individual issues. Mr Mount is happy with this approach.

I would be pleased to discuss further if you wish.

DLP

DAVID PASCALL
27 October 1983

CONFIDENTIAL

Prime Minister ②

You have agreed but
might like to
study at more
leisure.



AT
26/10

10 DOWNING STREET

Prime Minister

Treasury wish to make a
statement on this tomorrow,
orally, after the Business
Statement. This cannot be
delayed as rumours are
already beginning to
circulate in the market.

It is tiresome having to
make oral statements in
advance of every issue, but
in light of BP, this is no
time to try a Written Answer.
Sale of 25 per cent of COW
would bring asset sales
to over £1.1 billion (after £290m
Bartol second payment and £540m
BP). With a few bits and
pieces, Chancellor should
reach his £1.25b target.

Agree decision and statement?

AT
26/10

12



Foreign and Commonwealth Office

London SW1A 2AH

From The Minister of State

26 October 1983

Dear Chancellor,

Cable and Wireless Share Sale

copy attached (file on blue)
 You sent Geoffrey Howe a copy of your minute of 25 October to the Prime Minister. He has unfortunately not been able to see the papers today, and I am writing on his behalf.

I can certainly agree to your proposal to sell shares in Cable and Wireless. The only point of difficulty for me arises from the numbers you now plan to sell.

As you say in paragraph 3 of your minute, the overseas governments whom we have notified of our intention to sell shares have raised no objections. However, in the course of notification, we told them - as was agreed between officials of our two Departments and Cable and Wireless themselves - of our intention to retain 76 million shares (equivalent to 114 million following the recent scrip issue), just over 25% of the total number of issued shares. Your present proposal is to retain some 90 million shares (post scrip issue), or about 20%. The changes in HMG's powers and rights in the Company brought about by a reduction in the Government's holding to below 25% would not in practice be of over-riding importance provided that the Special Share is agreed. However, I would strongly prefer to stick to what we have told other governments we would do.

If there are compelling reasons to sell more shares now than was previously intended, I would not press this objection. But I should point out that although the terms of the draft statement you propose John Moore should make tomorrow are not specific, some overseas governments are likely to note the discrepancy between it and what we have said to them. This discrepancy is likely to be even more evident once the offer to sell is made public. So far, they have raised no objections to the proposed sale, and we might hope to get away with the discrepancy as 'fine tuning'. But equally, we might not, and any subsequent

/awkwardness

S E C R E T



awkwardness could affect Cable and Wireless - and the prospects for a second sale - as well as our bilateral relations with the countries and territories concerned.

The Hong Kong Government have expressed particular concern over this issue in the past. I have therefore thought it right to inform the Governor overnight of the possibility that you might make a statement tomorrow, and that this might involve the retention of fewer shares than previously envisaged. We shall also need to warn our posts in independent countries and tell them what to say if asked about the statement.

I am copying this minute to the Prime Minister, John Biffen and Norman Tebbit.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Brian Storr".

(Malcolm Rifkind)
Agreed by Mr Rifkind and
signed in his absence by
his Asst Private Secretary

The Right Hon Nigel Lawson MP
Chancellor of the Exchequer

S E C R E T

ELON PER - Privatisation

pt 4

20 OCT 2003



SECRET



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

PRIME MINISTER

CABLE AND WIRELESS SHARE SALE

As part of the continuing programme of share sales, I propose, subject to market conditions, to sell a further tranche of the Government's holding in Cable and Wireless plc (C&W). The likely impact day would be late in November. The sale would take the place of Enterprise Oil which has slipped to early 1984-85.

2. The Government at present holds some 45 per cent of C&W's issued equity. I believe we should aim to sell about 25 per cent - 110 million shares. At the current share price of around 270p, this would raise about £300 million before expenses. It would make a substantial contribution to the target for asset sales for 1983-84 without straining the market's capacity for shares in C&W. It would also leave room for a similar sale later in the life of this Parliament.

3. The Governments of those overseas countries in which C&W provides telecommunications services have been notified of the intention to sell shares and have raised no objections. I have considered whether C&W's exposure to Hong Kong might lead others wrongly to infer from a sale that HMG did not have confidence in the prospects for the negotiations with the People's Republic on Hong Kong's future. The FCO have

SECRET



consulted the authorities in Hong Kong, who observed that HMG's policy of privatisation was widely known and understood there. They did not therefore expect an adverse reaction.

4. The Directors of C&W welcome the proposal to sell shares. They are shortly to recommend shareholders to adopt a new provision in the Company's Articles, conferring on the Government a Special Share which would enable Ministers to ensure the continuance of the existing provisions in the Articles limiting the shareholdings of individuals and parties acting in concert to 15 per cent of the Company's equity. If shareholders approve the proposal with the necessary 75 per cent majority, the Government will then be able to continue to guarantee the Company's independence, irrespective of its own shareholding.

*With hindsight
this should have
been done
when C&W first
sold.*

5. In view of the interest expressed by the House in the BP sale, I propose that John Moore should make a short Statement on C&W after Questions on Thursday 27 October. I attach a draft.

...

6. I am copying this minute to Geoffrey Howe, John Biffen and Norman Tebbit.

N.L.
25 October 1983

DRAFT STATEMENT

1. With permission, Mr Speaker, I will make a Statement.
2. As part of its continuing programme of privatisation, the Government is now considering disposal of a further tranche of its shareholding in Cable and Wireless plc during the current financial year.
3. The Government renounced control over the Company in October 1981 following the sale to the public of some 133 million shares. The Government's shareholding has since been further reduced to some 45 per cent of the Company's issued equity as a result of an issue of new shares by the Company in March 1983.
4. The Government has in mind a sale of approximately half its present shareholding through an offer for sale to the public. The precise timing and amount will be subject to market conditions. Parliamentary approval for the expenditure will be sought in a new Vote which will be presented to the House in due course. Pending that approval, the necessary costs of preparation for the sale will be met by repayable advances from the Contingencies Fund.
5. The Directors of Cable and Wireless are recommending shareholders to agree to the issue to the Government of a Special Share which will enable the Government, irrespective of its own shareholding, to ensure the continuance of those provisions of the Company's Articles of Association that limit the shareholdings of individuals and parties acting in concert to not more than 15 per cent of the issued Ordinary share capital. The Government supports this proposal, and will vote in favour of it with its own shareholding.



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
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SWITCHBOARD 01-215 7877

From the Minister of State
for Industry and Information Technology

KENNETH BAKER MP

John Moore Esq MP
Minister of State
HM Treasury
Parliament Street
London SW1

Prime Minister
To be aware at this stage. Policy Unit will provide a summary of the main issues and a timetable of how the debate will run, probably for the weekend box.

24 October 1983

AT
24/10

BRITISH TELECOM: DRAFT LICENCE

I am enclosing a copy of the draft licence for British Telecom which is to be published on 25 October in fulfilment of the commitment given, during the Second Reading Debate, that it would be available to the Committee considering the Telecommunications Bill.

I shall be presenting it to Standing Committee 'A' tomorrow. Copies will also be sent to other interested parties including the press, the industry, local authorities and consumer bodies, with an invitation to them to make comments on the draft. The licence is not, therefore, in final form and we shall be amending it in the light of the debate that takes place both inside and outside Parliament.

I am copying this letter and attachment to David Waddington, Hamish Gray, Lynda Chalker, Arthur Cockfield, Alick Buchanan-Smith, Kenneth Clarke, Ian Gow, Adam Butler, John Macgregor, John Stanley and John Stradling Thomas.

KENNETH BAKER

M15/M15ABI

DTI Brief for Ministers

A

DRAFT BT LICENCE

Benefits to the Consumer

A. Provision of Service

The Licence guarantees the provision of services which are important to consumers. For many of these services this is the first time that there has been such a safeguard. Examples are:

- universal service obligation (both voice telephony and other services) in Condition 1.
- services to rural areas in Condition 2.
- 999 call services, free of charge in Condition 6.
- Public callboxes. Condition 11 obliges BT to continue the existing network of boxes and prescribes the limited circumstances in which call boxes can be withdrawn.
- Prices. Condition 2c ensures uniform charges throughout the country, including rural areas for maintenance of telephone lines for the next 5 years and Condition 26 ensures uniform connection charges (up to 100 hours work for a similar period. Both before and after that period Condition 17 will prohibit undue discrimination against any class of customers.

B The Disabled

- Conditions 31 and 32 ensure the continued provision of a range of apparatus designed for use by the disabled in particular the hard of hearing, and for continuing consultation between BT, the Director and interested groups.
- Condition 33 ensures that in due course (probably by 1985) all public call boxes will be fitted with inductive couplers.
- Condition 3 obliges BT to continue to provide the directory enquiry services and Condition 34 ensures that the blind, who rely heavily on this service will not be financially disadvantaged in the event of the introduction of charges.

C Consumer matters generally

- Conditions 27 and 28 oblige BT to continue to issue a Code of Practice for consumers setting out eg procedures for settling disputes and for allowing independent arbitration of disputes involving single sums.
- Condition 29 ensures consultation between BT and consumers' organisations.
- Condition 30 provides for BT to have the metering systems approved by the Secretary of State or his representative.

COMPETITION POINTS

The licence contains reassurance:

A For those who run other systems (eg Mercury, VANS operators, cellular radio and, potentially, resellers)

- obligation on BT to connect other systems to the BT system and for the Director to arbitrate on commercial and technical disputes about interconnect (Condition 13);
- obligation to let others provide services by process of the BT system - eg telebanking etc (Condition 15);
- publication and charging of standard charges - no hidden discounts for telecom services (Condition 16);
- prohibition on undue preference and undue discrimination (Condition 17);
- force majeure provision (Condition 43) requires BT to take all reasonable steps to secure compliance with licence conditions despite industrial disputes.

B For those who manufacture apparatus:

- separate company for the production of apparatus and open tender procedures when BT acquires some apparatus from the production company (Condition 21);

C: For those who supply apparatus:

- prohibition on cross subsidies to BT's apparatus supply activities from the network (Condition 18);
- separation of BT's Systems Business from its Apparatus Supply Business (Condition 20);
- prohibition on preferential treatment where BT's Systems Business does things for the Apparatus Supply Business (Condition 22);
- obligation to connect subscriber apparatus supplied by others (Condition 14);
- prohibition on linked sales - you can only have a line if you buy my apparatus (Condition 35);
- prohibition on certain exclusive dealing arrangements
 - BT cannot corner the supply of some types of apparatus (Condition 36);
- requirement to provide itemised quotations and bills when BT supplies packages of apparatus and monopoly services (Condition 37);
- Code of practice to stop BT's Systems Business leaking information to BT's Apparatus Supply Business (Condition 38).

27 OCT 1963

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7 6

100 (handwritten)



DRAFT LICENCE FOR BRITISH TELECOMMUNICATIONS

EXPLANATORY NOTES

INTRODUCTION

1 The attached document is the draft of the Licence to be granted to British Telecommunications ("British Telecom") when the Telecommunications Bill becomes law in about July 1984. The draft Licence has been the subject of lengthy discussions with British Telecom and sets out the Government's firm proposals. The draft is not, however, the final text of the Licence because:

- (a) Parliament may amend the Telecommunications Bill before it becomes law and, since the Secretary of State must do what the law says, he may need to change the text of the draft Licence to carry out Parliament's wishes;
- (b) the Licence itself deals with complicated legal, technological and commercial issues some of which require further consideration with interested parties. These are indicated later in these notes and in footnotes to the Licence; and
- (c) the Government wishes to hear the views of those who will be affected by the Licence (including consumers, those who work in British Telecom, the telecommunications manufacturing and service industries and members of the public) and may decide to make changes to the draft Licence to take account of the views which are expressed.

PART 1: THE LICENCE

2 Part 1 is the heart of the Licence and links all the later Parts of the Licence together. Paragraph 1 gives British Telecom permission to run the telecom systems which are described in Schedule 1, and to connect to other telecom systems and to provide the telecom services specified in Part 4. But when it does these things British Telecom must abide by the Conditions or rules set out in Part 2 and the permission can be revoked, or taken away, in the (unlikely) circumstances described in Part 3. Paragraph 2 allows British Telecom to benefit from the provisions of the Telecommunications Code (contained in Schedule 2 to the

Telecommunications Bill) so that it can install all the telegraph poles, wires, underground cables and so on which are needed to link telephones and other telecom apparatus to each other. Paragraph 3 says that the Licence will last for at least 25 years and will go on for longer unless ten years notice of termination is given. The long period of notice is needed so that fears that the Licence might not be renewed will not prevent British Telecom from raising the capital to invest in expensive new plant and equipment.

PART 2: CONDITIONS

Introduction

3 Part 2 sets out the conditions which British Telecom must observe when it does the things permitted under paragraph 1 of Part 1. The conditions or rules are needed because the Bill tells the Secretary of State that he must do certain things when he grants a licence. In particular Clause 3 of the Bill places the Secretary of State under a duty, every time he grants a licence, to act in the way which he thinks best calculated to achieve a number of objectives:

- first he must so far as practicable ensure that everyone who wants a telecom service in reasonable circumstances can obtain service and he must pay special regard to those wanting emergency services, public call box services, maritime services and services in rural areas;
- second, he must ensure that those like British Telecom who provide telecom services are able to finance the provision of those services.

These objectives are the most important ones. Once the Secretary of State has taken account of them, he must then act in the way best calculated to meet further objectives:

- he must promote the interests of those who use telecom services or who use telecom apparatus (especially the disabled) in obtaining a variety of good quality services and apparatus at reasonable prices;
- he must maintain and promote competition so that telecom users obtain a choice of services and apparatus;
- he must promote efficiency and economy;
- he must promote research and development and the use of new techniques;
- he must enable British firms to establish and maintain a

leading role in telecommunications, encourage major users of telecoms to set up business in the UK, promote the provision of international transit services here and promote activities by British firms in overseas markets.

4 British Telecom will be made to comply with these conditions by the new Director General of Telecommunications (who is called "the Director" in the Licence) using the powers in Clause 16 of the Bill. Where the Director considers that a breach of a Licence condition has occurred he may issue an order requiring British Telecom to take such steps as he considers necessary to comply with the condition. Such orders are enforceable by civil proceedings in the Courts.

5 The Director may modify Licence conditions. This can happen in two ways. First, if the Director and British Telecom agree that a change to a Licence condition is needed or that a new condition is needed, and the Director gives public notice of his intention and then considers public comments about it, a Licence condition can be modified by agreement under Clause 12. Second, where there is no agreement between the Director and British Telecom but the Director thinks that a licence condition needs adding or changing, the Director may refer the matter to the Monopolies and Mergers Commission (MMC). If the MMC considers that a modification would be in the public interest, then the Director may, under Clause 15, modify the Licence to put matters right.

6 The Secretary of State's responsibility is limited to granting the initial licence and setting the initial Licence conditions. Once the conditions are set he has no power to initiate changes to them and only limited powers under Clauses 12 and 15 to prevent modifications. The Secretary of State sets the conditions of the Licence using the powers in Clause 7(4) and he must include conditions of the kinds described in Clause 8(1).

Section 1 of Part 2

7 Part 2 is divided into two sections. This is because Clause 8(1) of the Bill lays down the kinds of conditions which must be included in licences before British Telecom or any other licensee can be designated as a "public telecommunications operator" under Clause 9 or before the Telecommunications Code can be applied to them under Clause 10(2) (a).

8 All the Conditions in Sections 1 of Part 2 - ie conditions 1 to 17 - are set by reference to Clause 8(1). They impose a series of obligations on British Telecom

specifying the services it must provide and how it must provide them. Section 2 sets out the other conditions which the Government think necessary to implement Clause 3 and the other provisions of the Bill. The obligations in both Part 1 and Part 2 are subject to the limitations and interpretations in conditions 42 to 44, which explain when the Government thinks it impracticable to provide services and when demands for service would not be reasonable.

9 Condition 1 obliges British Telecom to continue to provide a universal telecom service; it must provide both voice telephony services and other services like telex throughout the licensed area (ie all the United Kingdom except Hull) to the extent that it is practicable to do so and there is a reasonable demand for the service. The condition says that British Telecom must convey "messages", which means that BT is obliged to install and maintain networks of wires, cables, radio links, telephone exchanges etc and to connect them to individual premises on request so that "messages" (eg telephone conversations or data signals) can be conveyed from one set of premises to another. British Telecom must also maintain the networks in good running order so that messages are actually conveyed.

10 Condition 2 is very similar to condition 1 but applies the universal obligation to provide voice telephony and other services to rural areas. This puts beyond any doubt the continued provision of satisfactory telecommunication services to rural areas. Condition 19 deals with the financing of loss-making services in rural areas. British Telecom's universal service obligations under both conditions 1 and 2 do not apply in any area where the Director is satisfied that reasonable demands for telecom services are being met by others and that it would not be reasonable for British Telecom to be under an obligation in that area.

11 Condition 3 obliges British Telecom to provide directory enquiry services, that is telephone numbers over the telephone, to assist people who have telephones connected to the British Telecom systems in making calls. But British Telecom will not be obliged to provide the number of a person who has asked to be "ex-directory".

12 Condition 4 obliges British Telecom in appropriate circumstances to install and maintain telecom apparatus which is not part of its networks (apparatus which is included in its networks is covered by Conditions 1 and 2). The obligation in Conditions 1 and 2 is to convey messages by means of the Applicable Systems but Schedule 1 makes clear the these end at the sockets or block terminals where telephones and other apparatus are connected. Telephones, private exchanges etc connected to such sockets or terminals

do not form part of the British Telecom networks. Condition 4 obliges British Telecom to install apparatus in customers' premises and then to maintain it except for example where the apparatus is beyond repair.

13 Condition 5 obliges British Telecom to connect its network to networks in overseas countries and also in territories like the Channel Islands and to provide international telecommunication services. This obligation reflects British Telecom's position as the United Kingdom's prime international carrier.

14 Condition 6 obliges British Telecom to provide "public emergency call services", commonly known as the 999 services. Under this condition British Telecom must provide these services at all places throughout the licensed area where people have access to its network; whenever anyone picks up a normal working telephone then that person must also be able to make a 999 call from that telephone. Police, Ambulance, Fire and Coastguard are the emergency organisations most frequently used but this condition also requires BT to provide emergency services to others where the need is identified. There needs to be some flexibility in how the emergency services are to be provided because the licence will run for at least 25 years. In that time there will be both technological and organisational changes which may make it desirable to alter the way the 999 service is provided. However, paragraph 6.3 prevents British Telecom restricting any emergency services it provides unless this is agreed by the authority responsible for the emergency organisation (or by the Director).

15 Conditions 7 to 10 require British Telecom to continue to provide other emergency services and to formulate such plans and arrangements for emergencies as may be required by the appropriate authorities. Such services and requirements will include calls made by the emergency organisations (condition 7), maritime services such as the Distress Watch Service (condition 8), special arrangements in the event of major accidents and plans to facilitate essential national communications in the event of damage to the network from whatever cause (condition 9) and fault repair arrangements for essential services (condition 10). British Telecom will be entitled, where this is appropriate, to recover the costs of such services, plans and arrangements.

16 Condition 11 obliges British Telecom to provide public call boxes. In large part the condition follows the existing agreement between British Telecom and the Post Office Users' National Council (POUNC) governing the removal of call boxes. But a major difference is that whereas the present agreement has been only voluntary, condition 11 imposes obligations on British Telecom (which the Director

has powers to enforce under Clause 16 of the Bill). Because of the concern expressed by many about the future of public call boxes these notes explain condition 11 in some detail.

17 Paragraph 11.1 contains the general obligation on BT to provide services at all call boxes in existence when the licence enters into force and those subsequently installed. 11.2, 11.3 and 11.4 govern the removal of call box facilities. 11.5 and 11.6 contain obligations to publish guidelines about the installation of new public call boxes.

18 Paragraph 11.2 sets out the circumstances in which BT may withdraw a call box; 11.2(a) allows withdrawal, provided the procedures set out in 11.3 are followed, where the provision is "impracticable", for example where the wayleave for the siting of a call box is withdrawn or a road is widened. 11.2(b) is based on the existing arrangements whereby British Telecom and POUNC agree a guideline for a call box's annual takings. 11.2(b) continues this practice but the minimum figure is to be agreed by the Director. No call box can be removed if its annual revenue (which includes an allowance for credit card calls, transfer charge calls etc) is above the minimum figure (unless of course any of the other circumstances covered in 11.2 apply) and before any such removal the procedures set out in 11.4 must be followed. However, if the annual revenue is below the minimum figure it is open to others, eg the local authority in the area, to make it up to the minimum figure, and 11.2(b) provides that if this happens the call box must stay.

19 Paragraph 11.2(c) allows, for example, the withdrawal of one call box in a "bank" of several boxes if their use declines but provides that one must remain nearby so there is no question of complete withdrawal of call box services. Paragraph 11.2(d) is similar and allows removal provided that there is another box nearby but it also allows for a temporary cessation of service to the extent the Director agrees. This might happen for example when a road is widened to remove a corner on which a box is sited and BT proposes to re-site the box.

20 Paragraph 11.2(e) allows for change in the way that call box services are provided but as in paragraphs 11.2(c) and (d) the actual services must continue to be provided nearby. The term "public call box" does not cover all "pay phones" normally found in pubs, cafes, clubs, airports etc. In many cases, although the public have access to these, they are in fact run not by British Telecom but by the publican, cafe owner etc, who normally pays a rent for the box and then keeps the coins put into it. However in terms of convenience to the public there is often little difference between the two except that in some cases pay phones are

subject to opening hours. Paragraph 11.2(e) allows for rented or private pay phones to replace public call boxes but this can only be done if there is a contract agreed between British Telecom and the provider of the pay phone and this contract must allow 24 hour access unless the Director agrees otherwise. The onus will be on British Telecom to ensure compliance with the conditions of such a contract.

21 Paragraph 11.3 sets out the procedure to be followed where British Telecom wishes to withdraw a public call box on the grounds that its provision is impracticable. British Telecom must try to install another public call box nearby, but if it cannot, it must inform the local authority and consumer bodies in the area about its proposed removal. These bodies may make representations to the Director who may oblige BT to install a replacement public call box nearby if he decides this is appropriate.

22 Paragraph 11.4 sets out the procedure British Telecom must follow if it wishes to withdraw a call box whose annual revenue falls below the minimum figure. This procedure broadly follows the existing arrangements. The aim is to ensure that all those with a legitimate interest are informed and have an opportunity to make comments for the Director to consider.

23 Paragraph 11.5 is concerned with the provision of new public call boxes, 11.5(a) dealing with the installation of new permanent boxes at new locations, for example on a new housing estate, and 11.5(b) with temporary call boxes, for example those installed at major conferences, exhibitions, sporting events etc. British Telecom must, in consultation with the Director, publish the criteria governing when it will provide such call boxes. It is expected that these guidelines will largely follow existing practice.

24 Paragraph 11.6 obliges British Telecom to provide call boxes at any location where the person requesting a box guarantees to pay its full cost.

25 Condition 12 obliges British Telecom to provide maritime telecommunication services in accordance with the Radio Regulations of the International Telecommunications Union. When they are on the high seas ships are outside the Licensed Area so the obligation on British Telecom is to provide links from ships over its network in this country to any network termination point, which could be on customer premises or a connection with another system (eg in Hull).

26 Conditions 1 to 12 are included in the draft licence in accordance with Clause 8 (1) (a) and require British Telecom "to provide such telecommunication services as are specified

in the licence". Conditions 13 and 14 fulfil the requirement in Clause 8(1)(b) that the licence must require British Telecom "to connect or permit the connection to any telecommunication system to which the licence relates of such other telecommunication systems and such apparatus as are specified" or described in the licence.

27 Condition 13 obliges British Telecom to:

- (a) connect its system to any telecommunication system run by someone else (eg the Hull system or a private branch exchange system in an office block) whenever the other system is licensed to connect to the British Telecom system (ie British Telecom must install such wires etc, forming part its system, as are needed to connect the two systems together);
- (b) provide other telecommunication services to the operator of the other system once it has been connected to enable the other operator to obtain telecommunication services (eg if a customer in Hull or a person using an extension connected to a private branch exchange dials a telephone number on the British Telecom system, British Telecom must connect the call, and convey the messages to the person receiving the telephone call);
- (c) maintain any call routing apparatus (eg the actual private branch exchange) contained in the other system if the conditions of the other system's licence say that British Telecom must maintain such call routing apparatus if a connection is to be made. (This obligation will decline in importance as the maintenance of new call routing apparatus is progressively liberalised).

28 Paragraph 13.3 lays down the circumstances when British Telecom will be exempt from these obligations; for example when the connection might be unsafe. Paragraphs 13.4 and 13.5 describe the conditions British Telecom may impose when it makes a connection; paragraph 13.6 says that if there is disagreement the Director may ~~attribute~~ ^{attribute} but (paragraph 13.7) this does not apply when a connection is made on standard charges, terms and conditions to another system operated under a general or class licence (eg with private branch exchanges).

29 As the footnote to condition 13 makes clear, the connection together of different telecommunication systems can raise complex technical, operational and commercial problems which will require further consideration before the Licence is finally granted. One of the issues which needs

further consideration is telephone numbering arrangements.

30 Condition 14 obliges British Telecom generally to connect, or permit the connection, to its systems of any apparatus which is approved under Clause 21 of the Bill.

31 Condition 15, which is required by Clause 8(1)(c) of the Bill, obliges British Telecom to permit any person who is running a telecom system connected to the British Telecom systems to provide any telecom services to others which he is permitted to provide under his licence. Condition 15 also obliges British Telecom to permit any person running such a system or using any apparatus connected to the British Telecom systems to provide services which do not fall within the definition of telecommunication services in the Bill. This is to ensure that people remain free to provide services like banking or the provision of information over the telephone.

32 Condition 16 obliges British Telecom to publish charges, terms and conditions for the generality of its telecommunication services, as required under Clause 8(1) (d), and to provide those services in accordance with those charges, terms and conditions. Condition 17 forbids British Telecom from showing undue preference or exercising undue discrimination, as required under Clause 8(1) (e).

Section 2 of Part 2

33 Condition 18 prevents British Telecom cross-subsidising its apparatus supply business, or its apparatus production business (see condition 21), or its provision of radio services with revenue from its "Systems Business". It also prevents British Telecom cross-subsidising its apparatus production business or its provision of mobile radio services out of revenue from its apparatus supply business but this second prohibition is to last only while British Telecom's apparatus supply business constitutes a monopoly situation under the Fair Trading Act definition. Condition 18 permits cross-subsidies where these are required under the licence as for example where British Telecom provides the 999 service free of charge or where it runs public call boxes at a loss.

34 Condition 19 provides a mechanism for ensuring that such cross-subsidies can continue even when full competition has been introduced. It permits, but does not oblige, British Telecom to introduce "Access Charges" to share the cost of the loss-making services it is obliged to provide with other operators who make use of BT's networks in providing telecommunication services to their own customers. The details of these "Access Charge" arrangements have not yet been worked out, but the broad principle is that, for

example, the charge for all telephone calls, made into a local area from outside should include an element to help meet the costs of the loss-making services. If Access Charges are introduced, condition 19 requires that they should also be levied on trunk calls made through British Telecom's own network. The condition requires British Telecom not to impose a higher charge on other operators than it does in respect of its own trunk calls and as a further safeguard the Director must approve the method used for calculating it. Condition 19 also requires the proceeds of the Access Charge to be used only for meeting the cost of the 999 service, public call box services and apparatus for the disabled and any losses made in rural areas.

35 Condition 20 requires British Telecom to establish separate accounting and reporting arrangements for its Systems Business and its Apparatus Supply Business. It lays down certain rules about how these arrangements are to be implemented. British Telecom is given until 1 April 1987 to complete the separation of accounts because its current nationalised industry accounts and organisation need substantial further alteration before the separation can be fully accomplished.

36 Condition 21 obliges British Telecom to establish a separate subsidiary company for its apparatus production activities by 1 July 1986. Once the subsidiary is established British Telecom itself will not be allowed to engage in apparatus production. Condition 21 also lays down an open tender procedure to be followed by British Telecom when it acquires apparatus from its apparatus production company in some circumstances, but there are exceptions for prototype apparatus etc. Condition 22 requires that British Telecom must satisfy the Director that, when it combines the supply of apparatus with the provision of telecom services to a customer, there will be a fair opportunity for British Telecom's competitors in the apparatus supply market to obtain such services for their own customers on equivalent terms.

37 Condition 23 requires British Telecom to inform the Director about any general proposals for changing its systems in ways which would require customers or manufacturers to buy or produce modified apparatus, and the procedures which it operates for giving advance notice of such changes. This is to ensure that modifications and improvements to the network are carried out so as to give customers and manufacturers sufficient warning that their apparatus may become obsolescent.

38. Condition 24 places a limit on the prices BT may charge for the main services provided by its local networks. For five years from the date when the licence comes in force, the prices charged for those services, taken together, must be kept below the rate of inflation by "X" percentage points. The value of X will be determined nearer the date of issue of the licence taking into account the circumstances at that time. The prices covered by condition 24 are connection charges, the rental of an exchange line and local call charges, including local calls made from public call boxes. As the footnote to condition 24 makes clear, the possibility of including trunk calls as well is still being studied. An illustration of the working of the RPI minus X formula is attached to these notes.

39. Condition 25 provides for British Telecom to levy uniform maintenance charges for exchange lines over the first five years of the licence. Maintenance charges are the main component of the present "rental" charged for exchange lines. The footnote to condition 25 points out that condition 25 will need to be removed where simple resale of private circuits is permitted. This footnote to condition 25 also applies to condition 26.

40. Condition 26 provides that residential connection charges will be uniform over the first five years of the licence when the work involved takes less than 100 hours.

41. Condition 27 obliges British Telecom to continue its present practice of issuing a Code of Practice for its employees and customers. The present Code describes the terms on which BT provides services, the quality of service BT aims to achieve and the procedures and contact points for customers who have complaints or queries about their bills, service faults, directories etc. The present Code will need to be amended to reflect the changes brought about by the Bill, in particular the ending of provision of service under schemes. In future there will be a contract between BT and its customers which will substantially increase customers' legal rights and the Code has to reflect this change. Condition 27 therefore allows three months for the publication of the new Code but in preparing this British Telecom must consult the Director. British Telecom must also consult the Director about the Code's operation at least once every five years.

42. Condition 28 enables British Telecom's customers to have access to independent arbitrators in respect of small disputes related to the provision of the telecom services by BT. This continues existing arrangements, whereby dissatisfied customers can take their complaints to the Chartered Institute of Arbitrators. In future, when schemes are replaced by contracts, it will be open to dissatisfied

customers to take legal action but for the ordinary customer court action is normally too expensive and too lengthy. Condition 28 therefore enables them to seek resolution of disputes involving small sums through independent arbitrators. A limit, to be agreed between the Director and British Telecom, will be placed on the sums which can go to arbitration. Initially this is likely to be £500, the same figure as at present.

43. Condition 29 requires British Telecom to receive and consider representations from consumer bodies about its provision of services and its supply of apparatus. The Director, bound by the statutory duties in Clause 3, has the ultimate responsibility for looking after consumers' interests and he will also establish, under Clause 50 of the Bill, national advisory bodies for Scotland, Wales, Northern Ireland and England which will be concerned with consumer matters. There are also expected to be local, non-statutory bodies, which will have a role in sorting out complaints at local, as opposed to national, level.

44. Condition 30 is related to Clause 23 of the Bill which enables the Secretary of State or the Director or persons authorised by them to approve metering systems attached to licensed telecommunication systems. It is envisaged that the work of administering an approvals scheme under Clause 23 will be undertaken by the British Approvals Board for Telecommunications but the precise form of the scheme is still being considered. Thus condition 30 is likely to need substantial revision before the Licence is finally issued.

45. Conditions 31 to 34 impose obligations on British Telecom relating to the special requirements of the disabled for telecom services and apparatus. The Government has made clear its determination to ensure that after privatisation the disabled are looked after and British Telecom has also given public assurances on this. The Government is confident that British Telecom will look after the disabled and conditions 31 to 34 are included in the Licence to provide reassurance to the disabled.

46. Condition 31 covers the general needs of the disabled at large. It requires British Telecom to consult with the Director about the arrangements it makes to provide telecom apparatus (and its connection to the BT system and its maintenance thereafter) to meet all reasonable demands by disabled persons. British Telecom must also participate in the work of any advisory body on the disabled which the Director may establish under Clause 50 of the Bill. The effect of Condition 32 is to oblige British Telecom to continue to make available telephones which incorporate the inductive coupler (which enable people with suitable hearing aids to use the telephone) and telephones with amplifiers

(which enable hearing impaired people without hearing aids to use the telephone).

47. Condition 33 requires British Telecom to work towards installing in all public call boxes apparatus to enable people with hearing aids to use the telephones in those call boxes. British Telecom has already embarked on such a programme to fit inductive couplers to all public call boxes and expects to do this by the end of 1985. British Telecom is already obliged by condition 3 to continue to provide directory enquiry services and condition 34 provides that, if British Telecom should introduce charges for these services, those, eg the blind, who cannot use printed directories should not be financially disadvantaged. This shall be done by either providing directory enquiry services free of charge to such people or, if this is not practicable, compensating them afterwards.

48. Condition 35 prevents linked sales by placing an obligation on British Telecom, subject to certain specified exemptions, not to make it a condition of providing any telecom service or supplying any telecom apparatus, or of doing any of those things on more favourable terms, that any other telecom service or apparatus should be acquired from either British Telecom or any other specified person.

49. Condition 36, which prohibits certain exclusive dealing arrangements, places an obligation on BT, except with the written consent of the Director and subject to certain specified exemptions, not to make it a condition of buying any telecom apparatus that the supplier of that apparatus should:

- (a) provide telecom apparatus to BT or another person;
or
- (b) not provide that service or supply that other apparatus to another person.

50. Condition 36 also says that, while BT may agree with another person to act as sole supplier of some or all of that person's apparatus, if the Director is satisfied that that person did not willingly agree to give BT that sole right, the Director may oblige BT not to impose such a condition in future either in all circumstances or in certain specified circumstances. More work needs to be done on condition 36 to ensure that it deals satisfactorily with intellectual property rights etc.

51. Condition 37 requires that, when British Telecom supplies telecom apparatus as part of a single transaction or package also involving the provision of a telecom service, it must charge not less than the standard charges

for the services. It must also separate the charges for the apparatus from the charges for the services in any quotation or invoice relating to the transaction.

52. Condition 38 places an obligation on BT to draw up, with the agreement of the Director, a Code of Practice on the confidentiality of customer information for those of its employees engaged in its Systems Business. The Code will specify the people to whom information about a customer cannot be disclosed without the customer's consent and regulate the information about any customer or service which may be disclosed within the Business.

53. Condition 39 requires BT to pay a fee on the grant of the licence and an annual fee thereafter which will represent BT's share, as determined by the Director, of the cost of running OFTEL and any related costs incurred by the Monopolies and Mergers Commission. The annual fee shall be subject to a maximum limit of 0.05% of the annual turnover of the Systems Business.

54. Condition 40 places an obligation on BT to provide the Director with any information he may reasonably require to enable him to carry out his functions.

55. Condition 41 obliges British Telecom to give the Director 30 days prior notice, subject to the exception specified in paragraph 41.5, of any agreement for the establishment or control of a body corporate or the establishment of a partnership for the running of a telecom system under a licence, the provision of telecom services involved in the running of a system under licence or for the production of telecommunication apparatus resulting in the acquisition of a market share of more than 20%. The same obligation is also imposed about any other agreement or arrangement in the nature of a joint venture for running telecom systems or providing telecom services.

56. Conditions 42 and 43 set out the limitations on British Telecom's obligations under the Licence. The questions whether it is "impracticable" to provide a service or whether there is no "reasonable" demand for a service can in the final analysis be answered only by the Courts. However, there are circumstances where it is clearly impossible to provide services and these are explained in paragraph 42.1. Paragraphs 42.2 and 42.3 set out circumstances where British Telecom is entitled to refuse service because the demand would not be reasonable. Condition 43 gives British Telecom exemption from its Licence obligations on grounds of force majeure.

57. Condition 44 contain definitions and interpretations relating to the other conditions.

PART 3: REVOCATION

58. This Part lists the circumstances under which the Licence may be revoked.

PART 4: AUTHORISATION FOR OTHER SYSTEMS TO CONNECT AND TO PROVIDE SERVICES

59. This Part lists those systems and apparatus which are authorised to connect to BT's systems covered by this licence, and specifies the services which they are authorised to provide.

PART 5: EXCEPTIONS AND CONDITIONS RELATING TO THE APPLICATION OF THE TELECOMMUNICATIONS CODE

60. Part 5 of the Licence sets out the conditions with which British Telecom must comply in making use of Telecommunications Code powers contained in Schedule 2 to the Telecommunications Bill to install apparatus. They have been drafted on a provisional basis pending further consultations with interested parties including both British Telecom itself and local authority associations.

61. The conditions in Part 5 of the Licence are designed to reflect two of the criteria set out in Clause 10(4) of the Bill which are designed to ensure:

- (a) that the physical environment is protected and, in particular, that the natural beauty and amenity of the countryside is conserved; and
- (b) that there is no greater damage to streets or interference with traffic than is reasonably necessary.

62. The Telecommunications Code is constructed on the assumption that the planning status of telecommunication operators is a matter to be determined separately under planning legislation. The provisions in the Licence qualifying the exercise of Code powers will need to be reconsidered, therefore, in the light of responses to the Department of the Environment's forthcoming consultation document on the revision of the Town and Country Planning General Development Order 1977 made under the Town & Country Planning Act 1971. Conditions 1 and 2 of Part 5 assume that British Telecom will continue to enjoy its present exemption from planning controls and are designed to ensure that in these circumstances British Telecom's present practices in relation to the protection of the environment are maintained.

63. Part 5 of the Licence may also require modification following representations made during the review of the Public Utilities Street Works Act 1950 which was foreshadowed in evidence to the House of Commons Select Committee on Transport in January 1983 and which is shortly to be set in train.

64. The final version of the Licence will also need to reflect the different legislation that applies in Scotland and Northern Ireland in relation to some of the matters covered. The relevant definitions in the present version are appropriate only for England and Wales.

65. Condition 1 requires British Telecom to place underground all new telecommunication lines in a designated conservation area and the City of London, except where it undertakes emergency works, replaces existing poles and lines with wires of no larger diameter and makes additional service connections in an area where service is already provided by means of overhead lines.

66. Condition 2 covers other environmentally sensitive areas and in particular National Parks and Areas of Outstanding Natural Beauty. It requires British Telecom in these cases to give notice to the local planning authority before installing overhead apparatus. British Telecom is obliged to consider any written comments or suggestions made within 28 days of the giving of the notice and, where a decision is taken not to modify the original proposals in the light of these comments, British Telecom is obliged to give the planning authority a written notification of its reasons.

67. Condition 3 requires British Telecom to notify the highway authority of its intention to install telecom apparatus where the installation involves the breaking up of a maintainable highway. Quite independently of the Licence British Telecom will continue to be subject to the provisions of the Street Works Code in the Public Utilities Street Works Act 1950, which requires the submission to the highway authority of a plan and section of major works. Condition 3 does not interfere with these arrangements, but extends them by obliging the licensee to give written notice of his intention to install any apparatus which involves the breaking up of a maintainable highway. It also obliges British Telecom to consider any written comments or suggestions made by the highway authority within specified periods which are consistent with the requirements of the Street Works Code.

68. Condition 4 requires that, when emergency works are carried out which would otherwise require prior notice under Conditions 2 and 3, written notice has to be given to the

relevant authority as soon as possible after the commencement of the works.

69. Condition 5 obliges British Telecom to prepare and follow a code of practice to be agreed with the Secretary of State on the installation of external telecommunication apparatus. It is envisaged that the matters to be covered in the code of practice, which will draw extensively on BT's existing procedures, will include:

- (i) British Telecom's normal policy practice in relation to the placing of wires either underground or overhead and, in particular, its policy on the placing of overhead wires in environmentally sensitive areas other than those specifically mentioned in the licence conditions;
- (ii) the steps British Telecom will take to explore the possibility of using existing subways, ducts and poles owned by other bodies before constructing or erecting new ones;
- (iii) the installation of wires over maintainable highways particularly in respect of minimum heights and the involvement of highway authorities before wires (other than those covered in licence condition 3) are installed;
- (iv) procedures for the prompt removal, alteration or renewal of any overhead apparatus which has become dangerous;
- (v) the circumstances in which British Telecom will lay apparatus in verges and footways rather than in the carriage-way;
- (vi) the positioning of poles and related above ground apparatus in the street;
- (vii) the keeping of adequate records of all underground cables laid and the availability of such records to bona fide inquiries eg highway authorities and statutory undertakers; and
- (viii) British Telecom's practice in relation to the depth and protection of underground plant.

70. The main advantages of a code of practice are that it can allow for greater flexibility to meet the differing circumstances that will exist throughout the country and allow for changes that are appropriate in response to

technological developments, whilst bringing the matters referred to within the scope of the Director's power to enforce licence conditions. Where British Telecom appears not to be complying with the code of practice, it will be open to an interested party to take the matter up with the Director and, if he considers that a breach has occurred, he will be able to issue an enforcement order as described in these notes on part 2 of the licence.

71. The matters referred to in British Telecom's code of practice will set a standard to which other Telecommunication Code Operators will be expected to conform. In the case of other operators to whom Code powers may be applied, for example those running local wideband cable systems, it will be possible for interested parties to make representations, during the period of consultation initiated by the Secretary of State under Clause 10 of the Bill, to the effect that particular aspects of the code of practice should be modified or strengthened in the light of local circumstances.

72. The licences for other operators will also need to include provisions about bonding to ensure that any damage, eg to street surfaces, done by those operators will be repaired even if the operator goes out of business. Because of British Telecom's resources it is not thought appropriate to include bonding arrangements in British Telecom's Licence.

SCHEDULE 1: DEFINITION OF THE APPLICABLE SYSTEMS

73. Schedule 1 defines "the Applicable Systems", that is to say the systems which the licence authorises British Telecom to run. The systems include both British Telecom's major networks such as the Public Switched Networks and isolated point-to-point links (such as "external extensions").

74. The Applicable Systems are defined

- (a) by reference to specified places to or from which each system may convey messages (paragraph 1(b)); and
- (b) by specifying certain particular systems which are excluded (paragraph 1(c)).

75. It is also stipulated that British Telecom alone shall run all the telecom apparatus comprised within each System and used for the purpose of running it (paragraph 1(a)). This sub-paragraph while ensuring that the running of the national telecommunications network does not pass out of

BT's hands, is drafted so as to permit:

- (a) flexible arrangements for apparatus associated with the system but not used to run it (eg apparatus for the maintenance of telephone exchanges);
- (b) the sharing of facilities, provided that BT runs those facilities to the extent that they are used for the running of Applicable Systems.

76. The concept of the 'network termination point' (NTP) is central to the definition. The NTP is a precise location (in practice it will usually be the mating surfaces of the contacts in apparatus such as a socket or block terminal). It is the point or points at which energy (as defined in section 4(1) of the Act) may pass in either direction between an Applicable System and apparatus connected to it but not forming part of it. The Applicable Systems are then those systems that may convey messages from one NTP on served premises to another but no further. The NTP therefore forms the boundary of any Applicable System and the Licence does not authorise British Telecom to run anything beyond the NTP.

77. In addition to conveying messages between one NTP and another, the Applicable Systems are also defined to permit the conveyance of messages between other points:

- (i) between an NTP and a place not on served premises; this permits such system facilities as operator services where messages pass between a subscriber and a point within the system;
- (ii) between any two places which are not NTPs, without passing through an NTP, provided that the conveyance of such messages is not a telecommunication service (as defined in section 4(2) of the Act) or is a call box service; this permits a wide variety of necessary "system housekeeping" messages to be passed within the system and also permits public call box services not located on served premises;
- (iii) between a place in the UK and a ship: this permits the provision of ship to shore radio telecommunication services and similar maritime services.

78. These arrangements have another important effect. They mean that the system may not be used to provide

telecommunication services except via an NTP. The NTP is therefore defined as the uniform point of connection through which all telecommunication services (other than public call box services and maritime services) must be provided. This provides for a uniform point of connection, facilitating fair competition in the supply of telecommunication apparatus and services.

79. The NTP must be located in one of two classes of apparatus. For purposes of connection to the generality of apparatus including telecommunications systems such as private branch exchanges and data communication systems, the NTP is located in a "Network Termination and Testing Apparatus" (NTTA), which forms part of the applicable systems and which must be on served premises. The NTTA is permitted only to have "network" functions, including the means of physical connection between the system and other apparatus, network testing and functions such as multiplexing and signal conversion, necessary to proper communication between apparatus and system. Customer's apparatus functions, such as private branch switching and telex terminals, cannot be integrated with the NTTA, but must always form part of separate apparatus, connected to the systems at an NTTA.

80. When connection is to be made between the applicable systems and other individually licensed telecom systems such as those run by Hull and Mercury, the NTP concept still applies but the NTP may instead be located in "Network Connection Apparatus" (NCA). In such cases, the connection arrangements will be subject to negotiation between the parties and there are no restrictions placed on the functions that can be embodied in the NCA. This allows full flexibility in the negotiation of sensible arrangements within the framework of licence condition 13 which requires British Telecom to connect other licensed systems to its system.

Excluded Systems

81. The schedule excludes British Telecom from running telecom systems in the area in which the City of Kingston upon Hull is at present authorised to run telecom systems. British Telecom may not therefore compete with Hull within the latter's area (paragraph 1(c)(ii)). Technical exceptions from this are made

- (a) to allow connection between the British Telecom and Hull systems in the Hull area;
- (b) to allow British Telecom to run trunk lines across the Hull area and to locate other parts of its system there (eg its existing automanual centre)

provided it does not offer connection facilities to subscribers.

82. The Applicable Systems also exclude all mobile radio services except the maritime services mentioned above (Paragraph 1(c)(iii)). This means that British Telecom may not, under this licence, run mobile radio services such as radio telephones and radio paging services, and will require separate licences for these services.

83. The Applicable Systems also exclude telecommunication systems run under any other licence granted, or having effect as if granted, under section 7 of the Act. This is primarily intended to ensure that British Telecom is not able to use the authority of this licence to run branch systems (PBXs and data communication systems, including local area networks, are examples of such branch systems). Were British Telecom able to do so, it might obtain an unfair competitive advantage through the application of Telecommunication Code powers and through the exclusive ability to dispense with the NTTA to which privately supplied apparatus must be connected. BT will be able to run branch systems, but only under another licence, and in this respect will be on exactly the same footing as any other person.

84. The Applicable Systems exclude, as they must, systems located outside the United Kingdom. Also excluded are systems run by international organisations, many of whom enjoy privileged status under treaties or international agreements.

85. The definition of the Applicable Systems raises complex legal and technical issues and will require further consideration with interested parties.



da
VCCDP

10 DOWNING STREET

From the Private Secretary

24 October 1983

Dear Callum,

System X

The Prime Minister has seen your Secretary of State's minute of 19 October setting out the arrangements that have been agreed with Sir George Jefferson. She has noted that for the next two years new orders will be placed with GEC/Plessey and that there will not be an international tender during this period. She has also noted that thereafter about 10% of BT's requirements would be met by international tender, though in the expectation that this equipment could be manufactured in the UK. She agrees that this is a satisfactory outcome to this question.

I am copying this to John Kerr (HM Treasury), John Ballard (Department of the Environment), John Graham (Scottish Office) and to Richard Hatfield (Cabinet Office).

Yours sincerely
Andrew Turnbull

Andrew Turnbull

Callum McCarthy, Esq.,
Department of Trade and Industry.

da

Trade dispute over job losses prevents issue of injunction

Mercury Communications Ltd v Stanley and Another

Before Mr Justice Mervyn Davies
[Judgment delivered October 21]

His Lordship dismissed a motion in the Chancery Division by Mercury Communications Ltd seeking an injunction against the Post Office Engineering Union and its members restraining them from inducing, procuring, or threatening to induce or procure breaches of contractual relations between Mercury and British Telecommunications by procuring or threatening to induce or procure breach of contracts of employment or other unlawful means so as to cause loss or harm or damage to Mercury.

Mr Alexander Irvine, QC, Mr Richard Field and Mr Patrick Elias for Mercury; Mr Christopher Carr, QC and Miss Cherie Booth for the union.

MR JUSTICE MERVYN DAVIES said that by their motion Mercury Communications Ltd had sought interlocutory relief against Mr Bryan Stanley and the Post Office Engineering Union (POEU). But since it emerged at the hearing that Mr Stanley, though the general secretary of the union, was not in fact a member of the national executive council of the union, it had been agreed that a member of the council should be made a defendant in his place.

The writ, dated October 5, 1983, in general terms claimed, *inter alia*, an injunction restraining the defendants from inducing and/or procuring and/or threatening to induce or procure a breach of contractual relations between Mercury and British Telecommunications by inducing or procuring breaches of contracts of employment so as to cause loss, harm or damage to Mercury; and an order requiring the defendants to rescind the executive council resolution in March 1982 to instruct union members not to cooperate with Mercury and any resolution of a like nature and to withdraw any restrictions issued in or about May 1982 implementing the March resolution. Damages claimed by the writ were not sought on the motion.

Mercury was a private company incorporated in 1981 with a capital of £1m, the shares of which were held, as to 40 per cent by a subsidiary of Cable and Wireless plc, as to 40 per cent by a subsidiary of British Petroleum plc and as to the remaining 20 per cent by a subsidiary of Barclays Merchant Bank Ltd.

On February 22, 1982, the secretary of state in exercise of powers conferred on him by section 15(1) of the British Telecommunications Act 1981 granted to Cable and Wireless a licence to run a telecommunications system in the United Kingdom on terms that Mercury would act as Cable and Wireless's agent in running the system.

On September 10, 1982, the Mercury shareholders entered into a joint venture agreement for the design, construction and operation and commercialization of such a

system, and duly appointed Mercury as their agent to operate it.

Those activities took place against a background of change. Until 1981 the Post Office had a monopoly of telecommunications systems within the UK. By the 1981 Act the public corporation British Telecommunications was established. British Telecommunications took over from the Post Office its telecommunications function.

By section 10 there were transferred to it the property rights and liabilities comprised in that part of the Post Office's undertaking concerned with the provision of telecommunications and data processing services. By section 12 it was given the exclusive privilege of running telecommunications throughout the UK.

By section 15 of the Act, there was provision for the grant of licences for the running of telecommunications systems. A licence was granted by the secretary of state or by British Telecommunications, acting with the consent of the secretary of state.

There was also a Bill before Parliament called the Telecommunications Bill 1983, due to come before a standing committee of the House of Commons on October 25 for the abolition of British Telecommunications' exclusive privilege and for transfer of all its rights and liabilities to a successor company with financial provisions for the sale of the shares of such successor company.

In other words there was contemplated "privatization" as it was now called of British Telecommunications. The Bill also required that, as a condition of any licence granted to British Telecommunications and Mercury, both would be obliged to permit interconnection of each other's telecommunications systems.

On November 5, 1982 Mercury and British Telecommunications made an agreement providing for interconnection in various ways.

The defendants' position was that they objected to Mercury being allowed to use the British Telecommunications network and to the proposals to privatize British Telecommunications. There were about 130,000 members of POEU and the work of interconnection depended on their helping, or at any rate not obstructing that work. The union was anxious to prevent further interconnection and to oppose privatization and been active in pursuing those objectives.

Instructions had been given in April or May 1982 to union members not to make any connexions for the time being between the public telephone cable system and the alternative network. A day of action on October 20, 1982 was said to be only "the start of the campaign against privatization". Some demonstrations followed and on April 6, 1983 some selective strikes were launched in the London area. Those were called off on May 12, 1983 in consequence of the announcement of the general election.

On July 27, 1983 at a special meeting of the executive council of the union it was decided to escalate

industrial action against Mercury shareholders.

Mr Irvine contended that a report of a special conference of POEU in September 1983 showed that it could not be said that the union was campaigning merely against the Telecommunications Bill and he relied on it as showing that the union activity was not in furtherance of any dispute with British Telecommunications but was rather one campaign embracing opposition both to Mercury and to privatization.

He produced evidence of damage being done to Mercury which included that potential customers were being deterred because they supposed that Mercury would be unable to function.

Mr Carr said that the union had not expressly informed British Telecommunications that it was in dispute with it.

His Lordship had to bear in mind that it was not his task to decide the final rights of the parties, but merely to decide whether or not to make some appropriate interlocutory order or to dismiss the motion.

His Lordship had to be guided by the principles laid down in *American Cyanamid Co Ltd v Ethicon Ltd* ([1975] AC 396, 407) to be applied in the light of section 17(2) of the Trade Union and Labour Relations Act 1974, as amended by the Employers Protection Act 1975.

His Lordship also had in mind section 13(1)(a) of the 1974 Act, as amended by the Trade Union and Labour Relations (Amendment) Act 1976, and section 29(1) and (6) of the 1974 Act as amended by the Employment Act 1982.

Mercury's case was that the defendants' activities in preventing interconnection between the two networks was tortious at common law, involving (1) indirectly inducing a breach of the interconnection agreement by unlawful means, and (2) interference with Mercury's business by unlawful means.

What the plaintiffs complained of was that the defendants were inducing their members to break their contracts of employment. That would be "unlawful means" at common law for the purposes of the two torts.

But section 13(1) of the 1974 Act, as amended, conferred immunity in inducing a breach of contract of employment when done in contemplation or furtherance of a trade dispute.

It was common ground between Mr Irvine and Mr Carr that the effect of the decision in *Hadmor Productions Ltd v Hamilton* ([1983] IAC 191) was that if the inducement was of the character now complained of it was not capable of constituting unlawful means as a necessary ingredient of either of the two torts complained of. The basic question which emerged was whether or not the defendants had acted in contemplation of a trade dispute.

But having so far agreed, Mr Carr then parted company Mr Irvine.

The defendants' case in outline was: (a) there was in existence a trade dispute between British

Telecommunications and its employees who were members of the defendant union;

(b) the subject matter of the dispute was fear of job losses;

(c) the action taken by the employees in refusing to connect and the defendants' action in advising that course was action taken in furtherance of that dispute;

(d) accordingly the defendants were within the statutory immunity conferred by section 13(1) and

(e) in any event the court's discretion having regard to section 17(2) ought to be exercised in the defendant's favour.

In light of Mr Carr's concession, his Lordship was justified in regarding the union's instructions to its members, not to connect up the two networks, as being actionable in tort at common law. But there was that possibility of the statutory defence.

Section 13(1) said that an act done by a person in contemplation or furtherance of a trade dispute should not be actionable in tort on the ground only that it induced another person to break a contract or interfered or induced any other person to interfere with its performance.

On this interlocutory application his Lordship had to consider the likelihood of the union succeeding at the trial in establishing a section 13 defence. That resulted from section 17(2).

So it came to this: what was the likelihood of the union at the trial establishing that, in ordering its members not to connect up, it was acting in furtherance of a trade dispute as defined in section 29(1).

That question involved considering (a) whether or not there was in the situation before the court a "trade dispute" within section 29(1), and (b) if so, whether or not the acts as shown in the evidence amounted to acts done in contemplation or furtherance of that dispute.

The union's case was while they would continue to campaign against privatization and liberalization their members were, as well, in dispute with British Telecommunications in consequence of its orders in June 1983 to connect up with the Mercury network.

British Telecommunications said "connect" and the men had said "we will not". The reason for the refusal, so it was said, was that to connect to Mercury would lead to Mercury - and later other companies - doing work now done by British Telecommunications, so that connexion was the first step towards possible job losses.

So there was a dispute over British Telecommunications's cooperation with Mercury, and on that analysis a "trade dispute" within section 29(1), between the engineers and their employer, relating wholly or mainly to termination of employment. No doubt it related, as well, to a dislike to privatization, but the concern expressed by members had in great measure been about job losses.

His Lordship had supposed that fear of future job losses could not be prayed in aid at this early stage, and that some real threat of dismissal

would have to be shown, but the authorities showed that that supposition might be wrong: see *Hadmor Productions Ltd v Hamilton* at p226 B-G and *Heath Computing Ltd v Meek* ([1981] ICR 24).

So if there was a dispute it might be one relating to "termination" of employment within section 29(1)(b). The phrase had been "is connected with" rather than, as now, "which relates", but his Lordship thought it mattered not which phrase was taken.

It had to be remembered that British Telecommunications was obliged to enter into the interconnection agreement with Mercury and that it had no justification for failing to afford them facilities. It had to perform its statutory duty, and could not negotiate with the union in any true fashion over the interconnection issue.

His Lordship referred to the words of Lord Diplock in *NWL Ltd v Woods* ([1979] 1WLR 1294, 1304F), which might well relate to a dispute over job losses: see also *Duport Steels Ltd v Sirs* ([1980] 1WLR 142).

Mr Irvine submitted that there was no trade dispute within section 29(1). He said that the unions' and members' activities in refusing to connect up Mercury was not related to any dispute between British Telecommunications and its employees.

The refusal was part of a single campaign by the union against the Government and Mercury. Any suggestion that there was one campaign against privatization and another against liberalization, was, he said, pedantic and unrealistic.

There were certainly documents that supported that view, and the engineers' conduct in refusing to connect was "all of a piece" with action that was part of a single anti-Government campaign calculated to cause the Government to change its privatization proposals, which union members doubtless opposed fervently.

But all that was largely a matter of words until British Telecommunications in June 1983 ordered connexion to be made. Opposition then took the form of deeds, in disobeying British Telecommunications orders. It seemed to his Lordship that a particular dispute then crystallized.

'Reasonably' vitiates standard of proof

R v Sweeney (J. J.)

The direction of a trial judge to the jury on the standard of proof in a criminal case using the words "you must be satisfied so that you are reasonably sure" of the guilt of the defendant, was defective and was not cured by subsequent correct references omitting the word "reasonably".

The Court of Appeal (Lord Justice Kerr, Mr Justice Stocker and Mr Justice Eastham) so held on October 20 in allowing the appeal and quashing the conviction of John Joseph Sweeney at Southwark

It was a dispute with British Telecommunications as to whether or not its installations should be made available to Mercury, relating wholly or mainly to termination of employment: that is, job losses, and accordingly, in his Lordship's view, there was a "trade dispute" in existence within section 29(1).

BBC v Hearn ([1977] 1 WLR 1004), which showed that a union acting coercively might be without the protection of section 13(1), did not assist.

The next question, there being a trade dispute, was whether the union members in disobeying their employer's instructions were acting in "contemplation or furtherance" of the dispute. In this connexion, his Lordship had been referred to *Express Newspapers Ltd v McShane* ([1980] AC 672).

On the facts put before him, his Lordship answered that question in the affirmative. On the evidence, his Lordship thought that the defendants were likely at the trial to establish a section 13(1) defence.

In a case of the present kind it was impractical if not impossible to assess the financial consequences of making or not making an order. On the other hand, proceeding further with the principles of the *American Cyanamid* case, there was something to be said for Mr Carr's submission that the status quo should remain.

Mr Irvine had drawn attention to the words of Lord Fraser of Tullybelton in the *Duport* case at p166 including the statement:

"If the court considers, on the available evidence, that the threatened act would probably have an immediate and devastating effect upon the applicant's person or property - for example by ruining plant which could not be replaced without large expenditure and long delay - the court ought to take that into account."

Taking all the relevant considerations into account, including his Lordship's view that the defendants were likely to succeed at trial by virtue of section 13(1), his Lordship would decline to make any order on the motion. His Lordship gave directions as to the future conduct of the action.

Solicitors: Bird & Bird; Lawford & Co.

Crown Court before Mr Assistant Recorder Martin Graham, QC on February 8, 1983 of assault occasioning actual bodily harm.

LORD JUSTICE KERR, delivering the judgment of the court, said that it was well established that a proper direction to the jury on the standard of proof should indicate that they should be satisfied so that they were sure of the defendant's guilt before convicting him, and that the inclusion of the word "reasonably" at the outset of his direction on the law was enough to vitiate the direction.



P.O. Box 7, 200 Gray's Inn Road, London WC1X 8EZ. Telephone: 01-837 1234

CARRY ON BLACKING

The decision in the High Court yesterday over the blacking of the Mercury telecommunications company was formally only a preliminary bout to a full contest to be held at a later stage. It was only to consider Mercury's claim for an interim injunction to have the action lifted pending a full hearing. But the fact that the judge found Mercury's case not strong enough to justify an injunction is a blow both to the company and the Government's privatization programme, in other areas as well as telecommunications.

The rules that judges must follow in considering such claims in labour cases differ from those that apply generally. Usually a judge only has to consider whether the plaintiff has a case with any claims at all to substance. Then he must consider whether it is fairer on balance, to grant the injunction rather than leave the plaintiff to secure eventual redress through damages if successful. The judge should not attempt to weigh the balance of the main issue. In labour law he generally has to, because otherwise the courts would effectively be imposing a lengthy suspension of disputes in almost every case. This would draw the courts dangerously far into the political arena.

The final round might in theory still go the other way. Parliament's twelve years of busy law-making in this area

have left labour law a thing of shreds and patches, difficult to interpret, with many obscurities which have never been tested in the courts. But it is not difficult to understand why the judge arrived at his conclusion. Mercury did not claim that the action against it was a secondary action of the kind made illegal in 1980, because the action was in actual form clearly a refusal of the employers' instructions to connect Mercury to the British Telecom network - instructions which created not unreasonable fears in the workers that their pay and jobs might eventually suffer.

Mercury's contention was that whatever the action's overt form, it was in substance directed against them and the Government and that therefore it fell outside the 1982 definition of a trade dispute. The union has been energetically pursuing a frankly political campaign against the privatization policy. Far from standing to lose if the action succeeded, British Telecom would actually benefit from the elimination of a competitor.

The finding that the action was nevertheless a trade dispute seems a reasonable one. However strong the political overtones, the workers are refusing to obey employers' instructions out of concern over their pay and conditions. By preventing British Telecom from fulfilling its side of the Mercury contract,

they are causing it a loss of earnings. But Mercury's failure to secure an interim injunction clearly illuminates (as its success would have done) the ultimate paradox of public service labour relations. The union is now by implication free to apply sanctions freely against Mercury so long as it does so through its power over British Telecom apparatus. Thus its chances are improved, if it can sustain the action, of frustrating government policies specifically set out in the manifesto endorsed by the electorate only four months ago.

But every public sector pay claim is in some sense a challenge to government policy on cash limits. It would be wrong to introduce a new statutory definition of political action which effectively deprived disputes about pay and conditions of the immunities they have enjoyed for generations, just because the employees' grievance has its origin in a political decision. It is still however incumbent on the courts to distinguish the genuine trade dispute from the camouflaged political strike.

Yesterday's judgment sharply illustrates the limitations of the law in restraining attempts by organized labour to frustrate policies democratically arrived at. But it offers no pointers to an equitable means of creating such a restraint.

File

MR TURNBULL21 October 1983

cc Mr Mount.

SYSTEM X

The revised proposals meet the Prime Minister's earlier concerns. System X will now have two years to develop a firm home base. The competitive pressures contained in the proposals, both in the short and long term, offer the best chance of international success for System X.

DP.

DAVID PASCALL



JF4547

Prime Minister (2)

V. NO

This seems to meet your concerns about the original proposal. GEC/Plessey have been given two years to develop a home base from which to launch exports but

COMMERCIAL IN CONFIDENCE

Competition is provided for in the longer term. Agree?

PRIME MINISTER

SYSTEM X

There are much better alternatives

Yes. not

AT 21/10

Patrick Jenkin wrote to you on 5 May concerning BT's proposals to purchase telephone exchanges from L M Ericsson of Sweden in competition with System X. In the light of your views Patrick subsequently made it clear to Sir George Jefferson that the purchase of a foreign system was only acceptable if it was clear that GEC and Plessey were unable to satisfy BT's requirements. As a result of this, BT, for the first time, showed GEC/Plessey their total requirements which were considerably larger than those which had previously been revealed. Both companies have been able to accelerate the development and production programmes for System X in order to meet BT's requirements.

2 Sir George has now informed me that he intends to place new large orders with the suppliers on a competitive basis. He has undertaken not to introduce a second competitive system for two years, after which he intends that about 10% of his requirements would be met by means of an international tender. A second system could probably be manufactured in the UK. GEC and Plessey will have to meet tough performance targets during this interim period.



3 This is a satisfactory outcome and I have told Sir George that I am content with it. System X has two years in which to build a firm home base from which to attack world markets. Many thousands of jobs in Merseyside and Scotland are secured by this arrangement.

4 In the longer term, competition in the home market will be healthy for GEC/Plessey and will benefit BT's customers. BT's programme of digitalization is extremely ambitious - by 1986 all new exchanges will be digital and we shall have one of the fastest programmes of modernization of any major country. The benefits of this will shortly become apparent to consumers as the first of the fully digital exchanges comes into service later this month. After many years of delays in development System X has finally become a reality - the challenge is now for GEC and Plessey to make the product a success in world markets.

5 I am copying this minute to Nigel Lawson, Patrick Jenkin, George Younger and to Sir Robert Armstrong.

NT

19th

October 1983

Department of Trade and Industry
1 Victoria Street
London SW1H 0ET

Post & Telegram

Future P.O.

14.7

27 OCT 1963

Patricia Campbell (TP) to Patrick



SCNO

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Prime Minister ^②
To note

AT
18/10

M

17/10/83

PRIME MINISTER

POEU ACTION

In Cecil Parkinson's note of 6 October, he reported that the POEU, as part of its campaign against privatisation, had indicated a work to rule in BT's International Division. There are two strands of industrial action - one against privatisation and the other against Interconnection with Mercury.

2 You may care to have our latest assessment. The initial action against privatisation led to a deterioration in international services, particularly to countries outside of Europe and North America. However, management action taken over the weekend resulted in a significant improvement and, although some users may be experiencing delays in achieving calls, BT management advise that in general services are at present fairly normal. The POEU effort to escalate action to the Goonhilly and Madley satellite earth stations, through which about half BT's international traffic is carried has not been successful so far. On the other hand, the telex lines to Aberdeen have been disrupted.

3 The action against Mercury takes two forms - the refusal to interconnect the Mercury network and specific action against the Mercury partners, Cable and Wireless, BP, and Barclays. This



secondary action is having repercussions for other inland customers particularly in Central London. BT on 12 October bussed in engineers from outer London to carry out extensive work with somewhat mixed success. They extended bussing on an extensive scale on 13 October to cover the Home Counties.

4 Perhaps the most significant change to report is the short-term decision of the POEU to carry out outstanding repair and maintenance work at Mercury and Cable and Wireless. This move is presumably related to Mercury's request for an injunction against the POEU and Mr Stanley. The hearing for this has been postponed until today in order to give the POEU more time to prepare its evidence. The POEU are on weak legal ground in extending their action against interconnect with Mercury to action against Mercury, Cable and Wireless, BP and Barclays as ordinary subscribers to BT. By drawing back from the red line here, the POEU are obviously seeking to have as clean a sheet as possible before the Court reconvenes today.

5 BT management's strategy remains broadly as set out in the note of 28 September. Engineers who refuse to carry out management instructions are suspended. The number suspended fluctuates but currently stands at about 2000. It is understood that the POEU is paying these members the equivalent of their average net earnings, which is about £120 a week. Thus the cost to the Union must now be running at nearly £1m a week. The levy raised earlier brought in about £1m and at the moment there are no signs of any attempt to supplement this, so that without a



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change of tactics the Union could soon be forced to dip into its reserves. We understand that the POEU's total assets, including fixed assets, do not exceed £5m.

6 It is encouraging that the Society of Telecom Executives (STE), which embraces line supervisors to middle management and is not committed to action against privatisation, is generally co-operating well in keeping the international services going. A call earlier this week to the 1000 members in the International Division to attend a meeting during working hours was obeyed by only 100.

7 The POEU strategy was to concentrate on a limited number of strategic targets in London. They have been surprised by the scale and vigour of the management response and are concerned at the impact of BT's lock out strategy on their funds. The NEC met throughout 13 October and there was great concern about having to renew the levy. There are also some indications of a fear of rising resignation from the POEU.

8 The situation is very fluid but remains within the parameters expected by mangement. The heat is on the NEC. The BT management retain the initiative. The next critical point will be the Court case on Mercury interconnect, a decision on which is not expected before the end of this week. Should the POEU win,

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the NEC will win back some credibility. Should they lose, the silent majority may become less silent.

9 I am copying this to the Chancellor of the Exchequer, the Secretary of State for Employment, the Home Secretary and Sir Robert Armstrong.

NT
N T

17 October 1983

Department of Trade and Industry

SECRET

Post Office Future Pt 7



18 OCT 1983



10 DOWNING STREET

From the Principal Private Secretary

7 October 1983

You must think it very rude of me not to have replied to your letter of 3 August. It unfortunately arrived just after I had gone on holiday and for some reason was not shown to me until now. I apologise for not having acknowledged it earlier and hope that your interviews on British Telecom have been successful.

F. E. R. BUTLER

Thomas L. Rhodes, Esq.

da



PRIME MINISTER

Prime Minister ②
As warned yesterday

AT 6/10

MS

POEU INDUSTRIAL ACTION: BT AND MERCURY

Further to my minute of 28 September, Kenneth Baker met Sir George Jefferson this afternoon, who reported on the latest position on industrial action aimed against our telecommunication privatisation and liberalisation policy.

2 As has been reported in the Press, POEU workers in the International Division started a work to rule this week. BT management were afraid that this would result in a very serious disruption of a significant part of their international services. The local BT management has therefore been instructed to require the workforce to "carry out management instructions".

3 The result of this action is not yet known, but there is a strong possibility that it will result in a number of people being sent home or walking out. The same approach has been adopted towards those taking action affecting BT in the main exchange in Aberdeen, and the most likely outlook would seem to be escalation of action in the near future.

4 Meanwhile, Mercury has sought an injunction against the POEU,



naming Bryan Stanley personally, to force them to desist from action which they believe they can prove is causing Mercury major economic harm. Sir Michael Edwardes has spoken to Norman Tebbit about this. The line Norman has taken, with which I fully agree, is that Government should refrain from involving itself in a dispute between BT and its unions. I believe we should keep to this as long as possible.

5 I am copying this to the Chancellor of the Exchequer, the Home Secretary, the Secretary of State for Employment and Sir Robert Armstrong.

C.P.

C P

6 October 1983

Department of Trade and Industry

Post e Feb
Future of
p77



PRIME MINISTER

POEU ACTION

The Secretary of State for Industry's minute of 28 September which you saw at the weekend informed you that the POEU is taking industrial action on 2 fronts:

- (i) A work-to-rule in protest against privatisation;
- (ii) A refusal to undertake work in connection with the development of Mercury.

The minute stated that BT was likely to respond firmly by suspending striking engineers and that Mercury might seek an injunction against the union.

We have just heard that Mercury are likely to take legal action in the next couple of days. Mr. Gregson's advice that the Government should not become involved still holds. Mr. Tebbit is taking the same line. BT is likely to stay its hand on suspensions pending the outcome of Mercury's legal action.

4 October 1983

POLICY UNIT
30 September 1983MR TURNBULLPOEU ACTION AGAINST MERCURY

The Government has no need to become directly involved in this dispute. Nevertheless, as the establishment of Mercury as a competitor to BT is an essential plank in our policy for the liberalisation of telecommunications, we should, if challenged, express strong disapproval of the POEU's tactics. We should also take every opportunity to explain publicly how our telecommunications policy will benefit both the consumer and the employee in the industry.

The POEU is not in a strong position and there is every chance that the rank and file will become further distanced from the executive. We should privately back Sir Michael Edwardes' intention to issue an injunction against the unions, if this should become necessary. The Government should also not yield any points to BT during the drafting of the BT licence, even though Sir George Jefferson may use the POEU disposition to industrial action to win concessions.

At odds
with Mr
Gregson's
advice

D.P.

DAVID PASCALL

A

SECRET

ce NO 7

P.01108

MR SCHOLAR

cc Sir Robert Armstrong
Mr Buckley
Brigadier Budd

BT: INDUSTRIAL ACTION

The Prime Minister may find it helpful to have comments on the following points arising out of the Secretary of State for Trade and Industry's minute of 28 September:

- with memo*
- i. What is in practice likely to happen?
 - ii. Is BT being sensible?
 - iii. Would legal action be helpful, and should the Government encourage or discourage it?
 - iv. What can be done to mitigate the effects of the industrial action?

Most of the information on i., ii., and iii. arises from a meeting which Sir George Jefferson and Mr Michael Bett, BT's Personnel Director, had with the Secretary of State for Employment and his officials on 28 September.

What is likely to happen?

2. BT's counter measures - sending home engineers who are not prepared to carry out instructions - are thought likely to lead to a crunch with the Post Office Engineers' Union (POEU) towards the end of next week, ie around 6 October. The numbers sent home may increase by mid-October to about 5,000. Sending the men home will mean that the disruption to BT's normal engineering work will be more widespread than would result from the targetted action planned by the POEU. The effects of the disruption depend

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on the number of breakdowns and this in turn depends on how old-fashioned the equipment is. Much of the equipment in Fleet Street, the City and the West End requires considerable maintenance. By late October therefore there could be widespread disruption to business communications in central London. It will then be a question of BT's seeing this through until the increased number of engineers sent home drains the POEU's strike fund and makes the action so unpopular with the rank and file that it has to be called off.

Is BT being sensible?

3. Mr Tebbit's view and that of his officials is that BT is right to proceed in this way. The matters about which the industrial action has been called - Mercury interconnection and privatisation - are not negotiable. It would be evidence of weak management not to send home engineers who refuse to carry out instructions. BT would have more to lose than to gain in the market place by seeking to defer the crunch. The Department of Employment also share Mr Bett's judgement that a resolute management response now has a good chance of convincing the rank and file that industrial action against privatisation and the Mercury interconnection will be ineffective and pointless.

Legal action

4. BT have had legal advice discouraging them from going to the Courts. Mercury, or Mercury's shareholders, would have a better chance of success but there are some doubts in their case also. A firm which had no connection with the issues in dispute and was suffering damages as a result would have the best chance of success. The likely effect of a successful legal action on the course of the dispute is a matter of judgement. BT think that the POEU would abide by a decision of the Courts. On the other hand there is always the danger that

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Court action would provide the militants with a more emotive cause for rallying support. Mr Tebbit declined to be drawn into commenting on these matters. It seems best that the Government should avoid appearing either to encourage or discourage legal action.

Mitigating the effects

5. The first line of defence in mitigating the effects of the dispute is for BT managers to do the work which the engineers refuse to carry out, and the rest of their work when they have been sent home. Experience in the Civil Service and water disputes suggests that management substitution can often be more effective than had been predicted earlier. BT have every incentive to counter the disruption as successfully as possible so as to keep the goodwill of their customers. The judgement at present is however that, despite their best efforts, considerable disruption will occur progressively during October and November. BT will make efforts through the CBI and in other ways to promote an understanding attitude on the part of business customers affected and to discourage public pressure of a kind which might play into the hands of the unions.

6. The communications most essential to the Government and to the life of the community will be safeguarded, so far as possible, through the priority scheme already laid down. Following the work done by MISC 69, the Central Computer and Telecommunications Agency (CCTA) wrote to all Departments on 17 June telling them to get in touch with their local telephone managers to notify their up-to-date priority requirements, so that BT can use available resources to sustain the most essential links. Departments have also recently reviewed their contingency plans for coping with disruption to telecommunications, for example by adopting alternative methods of making payments. The CCTA is today

SECRET



SECRET

writing to Departments alerting them to the increasing risk of disruption from next week onwards. There is at present no action for the Civil Contingencies Unit, but, as Deputy Chairman, I shall keep the situation under review and advise the Home Secretary accordingly.

PLG

P L GREGSON

30 September 1983



PRIME MINISTER

Prime Minister (2)

To note, together with Mr Gregson's comments at Flag A, Policy Unit have also commented at Flag B.

MS

AT

30/9

BT PRIVATISATION AND MERCURY POEU ACTION

Kenneth Baker met Sir George Jefferson and Sir Michael Edwardes to consider the industrial relations situation in the wake of the POEU Special Conference on 18 September.

2 The Conference endorsed a package of action against Mercury interconnection with BT and privatisation and both Sir George and Sir Michael are now expecting some escalation in action on interconnection in the City area and possibly some action against privatisation in the Westminster area.

3 BT have decided to take firm counter-measures - that is, send striking engineers home and carry out interconnection via management - even if this leads to more serious confrontation than occurred before the Election. Sir Michael (who has been in touch with Sir George) has taken Counsel's advice and is prepared to issue an injunction against the Union. He feels that in the current climate Mercury cannot afford to be seen sitting on its hands.

4 The BT strategy is to exploit the deep differences in the Union between the broad left majority on the NEC and the



Mainstream majority within the overall membership, which gained a tactical success at the Conference on the issue of Mr John Golding despite NEC opposition. The more activists sent home, the greater the drain on the strike fund which has been generally unpopular, and the greater the strain between the NEC and on the whole the moderates who form the bedrock of the Union.

5 This is a higher risk strategy and it could well lead to some disruption in the City and the banking community in particular but I believe we must steel ourselves to give Sir George a chance to draw out the activists before the reintroduction of the Bill and to demonstrate to them that they cannot prevent the implementation of BT's agreement with Mercury. If Sir George succeeds, there may well be a groundswell against the broad left position at the recall of the POEU Annual Conference in November.

6 A vital weapon against the Union activists would be to ensure the widest possible employee shareholding. We are discussing a package with the Treasury which we believe will achieve this.

7 We may well be moving into choppy waters over the next few weeks and there could well be some business pressure for some concessions to the Union to buy a truce. I believe that the Government should continue to maintain a public silence, as we



did before the Election and treat it as a dispute between BT and
its workforce.

8 I am copying this to the Chancellor of the Exchequer, the
Home Secretary, the Secretary of State for Employment and Sir
Robert Armstrong.

CP.

C P

28 September 1983

Department of Trade and Industry

Post + Telecom Future Pt 7



28 SEP 1985

10 11 12 1 2 3 4 5 6 7 8 9



20

COOPERATIVE



CONFIDENTIAL

JU497

PRIME MINISTER

Prime Minister (4)

MUS 15/9

mt

MERCURY RESTRUCTURING

I have just heard from Eric Sharp, the Chairman of Cable and Wireless that AT & T had notified him on 12 September that they were not prepared to invest in Mercury at this point of time. As my office has already explained to yours, we no longer, therefore, require a meeting today.

2 You will wish to know, however, that Cable and Wireless and BP have now decided to look again at the possibility of finding strong UK partners before taking any further steps to seek a transatlantic partner. This move will be easier for us to digest while taking the Telecommunications Bill through the House of Commons, although it will also mean that Mercury's task of breaking into the all important United States market will be more uphill.

3 I am copying this minute to Geoffrey Howe, Leon Brittan, and to Sir Robert Armstrong.

A.P.

C P

15 September 1983

PostTel
Future of the
Post office, 197



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1 - SEP 1983

MR. JOHN COLEMAN (107-101) (107-101)

107-101 (107-101)

CONFIDENTIAL

DEPARTMENT/SERIES <i>PREM 19</i> PIECE/ITEM <i>1344</i> (one piece/item number)	Date and sign
Extract/Item details: <i>Armstrong to PM dated 13 September 1983</i>	
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Use the card for one piece/item number only

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e.g.

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PIECE/ITEM <i>49</i> (ONE PIECE/ITEM NUMBER ONLY)

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NBPM

SC N.O

MUS
1/9

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

31 August 1983

Dear Cecil,

TELECOMMUNICATIONS BILL TIMETABLE

Thank you for your letter of 2 August in which you sought my preliminary views on your suggested timetable for the progress of the Telecommunications Bill.

I fully appreciate your anxiety to have the Office of Telecommunications established by 1 July 1984 and I agree that we should aim for enactment of the Bill in time to meet this deadline. Pending the return of Parliament, however, I do not think it would be helpful to speculate about the best way to achieve our target. As you say, we shall need to weigh the attitude of the new Opposition team once they are appointed and I think the right course would be for me to let you have my considered views once John Wakeham has held some initial discussions through the usual channels. As far as the Committee Stage is concerned, this will commence on 25 October and thus an early start is assured once the House returns.

One further thought which occurs to me is that, if the timetable should at any point appear difficult to achieve, we should look critically at the need to allow a two month interval between receipt of Royal Assent and the Bill's entry into force. This might be shortened considerably in view of the fact that the Bill's provisions are already well understood by those principally affected. I imagine that criticism of such a change might well be avoided if HMSO were able to ensure rapid availability of prints of the final Act after receipt of Royal Assent.

/You also drew...

The Rt Hon Cecil Parkinson MP
Secretary of State
Department of Trade and Industry

You also drew to my attention the attitude which the Post Office Engineers Union might adopt in the light of progress on the Telecommunications Bill. I should be grateful if you would keep me in touch with developments in this area as the Union's views may well influence the Opposition's approach to the handling of the Bill.

I am copying this letter to the Prime Minister, Willie Whitelaw, Nigel Lawson, Norman Tebbit and John Wakeham.

John Biffen

JOHN BIFFEN

3. 11. 2

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5 6 7 8 9 10





PM/83/62

PRIME MINISTER

KCC NO

Answer meeting
yet to be set
up

4

Mercury Restructuring: Possible AT & T Shareholding

1. In his minute of 29 July, Cecil Parkinson suggested that, in restructuring Mercury, AT&T (together, possibly, with Reuters) might take up Barclay's shareholding.

2. I appreciate the advantage which Mercury could gain for its transatlantic services by a link with AT&T. However, even if Mercury remains an all-British company it is likely that there will be real difficulties in persuading some of the (monopolistic) European PTTs to allow Mercury access to their networks. With an American shareholding in Mercury this will probably be more difficult - as Cecil Parkinson points out, the European PTT reaction is likely to be 'Trojan Horse'. This therefore raises the question whether Mercury would want to risk in this way limiting itself to the transatlantic business. A substantial AT&T shareholding could also make more difficult the role of the Government in coordinating representation and negotiation of UK interests in international telecommunications fora. I share the Home Secretary's concern about the risk to the security of sensitive activities and welcome the suggestion of a meeting.

3. I am copying this to the Secretary of State for Trade and Industry, the Home Secretary and Sir Robert Armstrong.

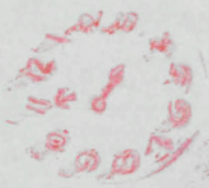
Foreign and Commonwealth Office

12 August 1983

Post & Tels Tidmore Pt 7



JUL
12 AUG 1983



SECRET

file

da



3

10 DOWNING STREET

From the Private Secretary

11 August 1983

The Prime Minister has seen the Home Secretary's minute of 10 August about the Mercury re-structuring and has agreed to a meeting of Ministers on this issue. I shall be in touch to arrange a time.

B/E |

I am sending copies of this to John Holmes (FCO), Jonathan Spencer (Department of Trade and Industry) and Richard Hatfield (Cabinet Office).

Timothy Flesher

Tony Rawsthorne, Esq.,
Home Office.

RF

SECRET

SECRET



Prime Minister

2
Agree meeting
sub

I understand the Home Secretary, Foreign Secretary, and Robert Armstrong are all concerned about the security implications of including AT&T in a restructured Mercury and hope you will hold a meeting in September.
Agree to such a meeting?

Prime Minister

MERCURY RE-STRUCTURING

LWL
10/8

I have seen a copy of the Secretary of State for Trade and Industry's minute to you of 29 July. As he implies I have an interest in the proposal to include AT & T in a re-structured Mercury consortium because of the potential implications for our interception capabilities. It seems to me that the inclusion in the consortium of a foreign firm with communications expertise must increase significantly the risk to the security of sensitive activities undertaken in this field.

I recognise, of course, that the security aspect is only one of a number of considerations to be taken into account, but I would not wish a decision to be taken without its being given due weight. I therefore welcome the suggestion in Sir Robert Armstrong's minute to Sir Brian Hayes of 4 August that the matter should be fully discussed with the Departments concerned and yourself before any approach is made to AT & T. I should be glad to attend a meeting of the Ministers directly concerned under your chairmanship.

I am copying this minute to the Foreign and Commonwealth Secretary, who I understand is also concerned about the security aspect of the re-structuring proposals, the Secretary of State for Trade and Industry, and Sir Robert Armstrong.

L.B.

10 August 1983

SECRET

Post & Tels Future of Post
Office Pt 7

110 AUG 1983

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From: THE PRIVATE SECRETARY

SECRET

MARKET SENSITIVE



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

4 August 1983

Dear Willie, ^{mm} 4/8

MERCURY RESTRUCTURING

We had a word on the telephone about the minute of 29 July to the Prime Minister from the Secretary of State for Trade and Industry. As Mr Parkinson anticipated, there are implications in the proposal for Mercury restructuring - in relation to establishing a capability for interception - which are of concern to the Home Secretary and to the Foreign and Commonwealth Secretary. Although you asked us originally for a very early response to Mr Parkinson's minute, this letter is to confirm what I said on the telephone: that it will take a few days to assess the implications in consultation with the FCO and for the Home Secretary to set them out in a minute to the Prime Minister. The Home Secretary expects to settle his position next week. You and others may like to know for planning purposes that it is possible that the Home Secretary, supported by the Foreign and Commonwealth Secretary, will suggest a Ministerial discussion before policy on Mercury restructuring is settled.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the Secretary of State for Trade and Industry and Sir Robert Armstrong.

Yours sincerely,
A R Rawsthorne

A R RAWSTHORNE

Willie Rickett, Esq

SECRET

Post & Telecom : Future of Post + Bahar Toban

PT-7

Goldman Sachs Limited | 9 Bridewell Place | London EC4V 6DJ | England
Tel: 01 353 6341 | Telex: 887904

FFCB o/r

Thomas L. Rhodes
Vice Chairman

Goldman
Sachs

Robin Butler Esq
10 Downing Street
London SW1

August 3, 1983

Dear Robin,

I wanted to keep you posted on the British Telecom situation. We have been asked by S.G. Warburg, advising BT and Kleinwort, Benson, advising the government, to present to them our views on opportunities to sell shares in the United States.

Further to the memorandum I recently sent you describing a simultaneous offering, we have now given opinions on size of offering and how US investors will perceive British Telecom. Basically we are optimistic.

Interviews will be held on September 15 and 16 with H.M. Treasury where I have met with Mr Tom Burgner, the Department of Trade and Industry, British Telecom and Kleinwort, Benson.

A decision on an adviser is expected shortly thereafter.

Yours sincerely

Thomas L Rhodes



DEPARTMENT OF TRADE AND INDUSTRY

Room 11.01 Ashdown House 123 Victoria Street SW1E 6RB

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Telephone Direct Line 01-212 3301
Switchboard 01-212 7676

2 August 1983

JU273

Secretary of State for Trade & Industry
Rt Hon John Biffen MP
Lord Privy Seal
House of Commons
London SW1A 0AA

Dear John,

TELECOMMUNICATIONS BILL TIMETABLE

Last week's Second Reading debate on the Telecommunications Bill confirmed that we shall again be faced with considerable opposition when the Bill goes into Committee. I think we are likely to face major timetable difficulties in achieving our objective of flotation for British Telecom in the Autumn of 1984.

According to our merchant bank advisers one of the essential pre-conditions for ensuring a successful flotation at that time is the establishment of the new regulatory authority - the Office of Telecommunications - by at the latest 1 July 1984 so that the City will have time to see the regulatory body in operation before taking the relevant investment decisions. Our advisers say that three months is the very minimum required for this. Allowing for the conventional two months' delay before the Act takes effect this points to having the Bill on the statute book by Easter 1984. The attached hypothetical programme shows how that deadline might be met. It represents a tight, but not impossibly tight, timetable, which I think we should make every endeavour to achieve.

As far as the Committee Stage in the House of Commons is concerned, I believe it essential that the Committee sits in the afternoons straight away from 25 October. If they do so, there would be 5½ hours debate each sitting day, rising at 7.30pm, except for the first and last days. This would mean 71 hours of debate if the Committee reports on 8 December.

I very much hope that it will be possible for Kenneth Baker to reach agreement with the Opposition at an early stage of the Committee about the progress that is to be made, and that we shall be able to meet the suggested timetable without having to resort to a guillotine.

JB
3/8



The Opposition spokesmen will initially be the same as on the previous Committee, as the Labour Party will by then not have elected their new spokesmen. This in itself presents problems since they are likely to be reluctant to commit their successors to any timetable and their successors may not themselves be keen to agree anything. If a voluntary agreement cannot be reached, however, my own inclination is to impose a timetable quickly so that we can have a balanced and orderly discussion of what is by any standards a long and complex measure which has of course been considered at great length before. We should not take risks with anything of such financial importance as the BT flotation. One aspect of this I must mention, however, is that the Post Office Engineers Union may react strongly to an imposed timetable, possibly with strike action. This is uncertain at present, but we will have a better idea after their special conference on privatisation on 18 September.

I should be grateful for your preliminary reaction to such a proposal.

I am sending a copy of this letter to the Prime Minister, Willie Whitelaw, Nigel Lawson, Norman Tebbit and John Wakeham.

Yours
Ever,
Neil

CONFIDENTIAL

25 October

cc House of Commons Committee
Stage begins

week beginning

8 December:

House of Commons Committee
Stage completed (This allows
for 14 sitting days - 71
hours in total).

(two weekends' gap)

19 December

Report and Third Reading -
the Euse of Commons

23 January

House of Lords - Second
Reading

2 April

House of Lords - Third
Reading

9 April

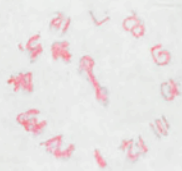
House of Commons -
Consideration of Lords
Amendments

18 April

Royal Assent

MA5/MA5AAO

Post + Telecom. Future
Pt 7



3 AUG 1993



JF4035

Copy No ...1... of ...9....

SECRET
AND MARKET SENSITIVE

Prime Minister

PRIME MINISTER

MERCURY RESTRUCTURING

Yes - but we
shall need to
have them
quickly
not

I am sure you will
want Sir G Howe's views,
and Mr Brittan's, as well as
Sir R Armstrong's.
MC 27/1

Cable and Wireless and BP the leading partners in Mercury are in the process of restructuring the company in the wake of the withdrawal of one of the founding members - Barclays Merchant Bank. Barclays made clear from the outset their intention to end their 20% equity participation once Mercury investment exceeded £50m.

2 Eric Sharp and Peter Walters decided earlier in the year that the best way of both guaranteeing Mercury's future and reinforcing its competitive position in a rapidly changing world telecommunications environment, was to bring in as a minority holder a leading American operator. They chose AT&T both because of the technological excellence of Bell Laboratories and because a partnership with AT&T would prize open the US market to Mercury and strengthen Cable and Wireless' chances of making a breakthrough in their US operations. Patrick Jenkin sounded out AT&T's reaction to such a link as part of an overall package when he visited the Chairman of AT&T on 8 April. There was agreement in principle that a link with Mercury was of mutual interest within the framework of a broader AT&T commitment to build up their European base in the UK. Since April, AT&T have been



S E C R E T
AND MARKET SENSITIVE

seeking to collaborate with Racal, BT and Plessey in cellular radio, with BT on an advanced communication service, with BT and possibly ICL on software for itemised billing, and with GEC-MacMichael on videoconferencing. They have also undertaken to establish a Bell R and D centre in the UK and to consider manufacturing VLSI (256k RAM and 32 bit microprocessors) and digital exchanges in the UK.

3 Following discussions with Kenneth Baker, I decided it would be best to bring in another British partner in addition to AT&T and there now seems a good chance that Reuters will be prepared to join a reconstituted Mercury consortium in which Cable and Wireless hold 40%, BP 30% and Reuters and AT&T the remaining 30%. Eric Sharp and Peter Walters have now invited Kenneth to join them in the next round of negotiations with AT&T towards the end of September.

4 The advantages of a link with AT&T to both Mercury and Government telecommunication policy which is so dependent on the success of Mercury are clear. The link does, however, raise several sensitive issues - the reaction of BT and the POEU, of British Industry, and of the European PTTs. Opposition from BT and the POEU are likely to be muted by BT's own negotiations with AT&T and AT&T's own discussions with the POEU on a possible memorandum of understanding. While many in British industry



S E C R E T
AND MARKET SENSITIVE

have already opened their own negotiations with AT&T we can expect some negative reaction, especially from Lord Weinstock who has himself been unsuccessful in his attempts to buy into both Cable and Wireless and Mercury. Some European cries of "Trojan Horse" can also be expected.

5 I have considered these difficulties carefully. I believe we will need to tighten some of our controls in the Mercury licence to safeguard UK industrial interests but have concluded that on balance we should not stand in Mercury's way of introducing US expertise into the UK, especially at a time when Cable and Wireless are establishing joint ventures with American companies to run new networks of equivalent size to Mercury in the United States itself.

6 The next step would be for Kenneth Baker to visit AT&T with Eric Sharp to discuss these issues further. But this is obviously a sensitive area, and there are other implications which may be of concern to Geoffrey Howe and Leon Brittan. Before any arrangements are made for Kenneth to visit AT&T, I should therefore be grateful for your views and those of the other recipients of this minute.

7 I am copying this to Geoffrey Howe, Leon Brittan and Sir Robert Armstrong.

C.P.

29 JUL 1983

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Prime Minister

With
Lord Weinstock's
Compliments

MS.

ms

26th July, 1983

Dear Cecil,

Thank you for your letter of 5th July, 1983 about Telecommunications.

I am sorry you have determined to keep the old Bill to all intents and purposes intact, and to carry forward its substantial shortcomings in the new legislation.

With regard to your fourth paragraph, the case for placing exceptional restrictions on BT's activities is the reflection of the simple and indisputable fact that its position in the market is exceptional. It constitutes an overwhelming monopoly, and the rights of monopolies must be restricted to protect the rights of others.

Your proposition that BT could conceivably be compared with ATT lends a new dimension to the argument, since I have not previously heard advanced any official support for the notion that BT should become a manufacturer. Apart from the fact that BT has no manufacturing experience, its position as a monopoly buyer of equipment for the

/.....

main switching system would place it in a position to wipe out the existing manufacturers of main telephone exchange and transmission equipment. It also gives credibility to the persistent rumour that BT is negotiating a licence from L M Ericsson. This seems to be a threat which the industry must take seriously, especially since BT has now told its UK suppliers of enhanced demand for switching equipment which it proposes to buy from LME on the pretext (false) that Plessey and GEC will be unable to meet the requirement.

Whatever the past shortcomings of the UK manufacturers, BT bears a heavy burden of blame for the way in which they have exercised the dominance, technical and commercial, to which they have clung for decades, and for forcing on the equipment makers one incompetent decision after another. That there is a wind of change now blowing in BT is no doubt a good thing, but there is no evidence as yet of any substantial improvement in the extremely low level of its operating efficiency.

I am glad that you at least agree that BT should not be able to compete unfairly in the UK apparatus market, but I believe it is inherently impossible to achieve this objective on the terms proposed in the Bill.

/.....

Our principal fear about the new style BT concerns the supply of terminal equipment, or subscriber's apparatus, where it is HMG's stated purpose to seek to improve the products and services available to customers through the stimulus of competition.

Despite the British Telecomm's Act of 1981, 95 per cent plus of this market is presently held by BT. When BT plc starts up, you are beyond all shadow of doubt creating a private monopoly in place of a public one. More than this, and uniquely, this monopoly will be the principal customer of most of its potential main UK competitors. Whether effective competition can ever become remotely possible depends on the terms of the licence and the attitude of BT with regard to its monopoly; we have had no grounds for reassurance here.

Even with the restraints that DoI have tried to apply from time to time, the way in which BT has recently been going on has given us good cause to be apprehensive. Some abuses of this sort will fade out of their own volition. As to the rest, and others not yet envisaged, the licence will be the only long term protection. Our experience of BT's attitudes, on the one hand, and the speed of technological change on the other, indicate the necessity

for an impossible degree of omniscience in a licence drafted in 1983 capable of coping with all future developments. But, and this is the most critical thing, even if the licence were perfect, the fact that BT will continue to control the fortunes of its major UK suppliers will enable it to apply irresistible pressures on the potential British competitors. No licence and no attempt at elimination of "cross-subsidies" can alter this. BT is doing pretty well at stifling competition, and there is every reason to believe that they will continue unremittingly to apply this pressure. Only our foreign competitors operating in the newly liberalised UK market cannot be so coerced by BT, on whose orders they are not dependent.

This is the principal reason why I suggested that BTE and the National Network should be constituted under separate ownership; there is no other obvious chance that UK suppliers will be able to compete on an equal basis, although starting with a competitor holding 95 per cent of the market is an odd sort of equality anyway.

I am grateful for your offer of consultation on the terms of the licence, which we will of course take

/.....

up. But it does little to quieten my considerable anxiety that the Government is set upon an imprudent course, the end of which it does not clearly foresee, one which, since its consequences will turn out to be seriously adverse to an important part of the telecommunications and electronics industry, will involve increasing hostility from those who will be the principal sufferers, and one which will, sooner or later, demand substantial amendment.

Lord Weinstock

The Rt. Hon. Cecil Parkinson, MP.,
Secretary of State,
Department of Trade & Industry,
Ashdown House,
123, Victoria Street,
LONDON, SW1E 6RB.

Telecommunications Bill

2nd Reading

Monday 18th July 1983

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This bill is substantially the same as the Telecommunications Bill which lapsed at the dissolution of the last Parliament. Significant new amendments are mentioned in the appropriate sections below.

PURPOSE OF THE BILL

Information Technology (IT) is a rapidly growing and rapidly developing sector of the economy. Its development demands access to a modern telecommunications network. The Government is determined that:

- * the telecommunications supply industry should not be held back unnecessarily in responding to expanding IT markets;
- * that BT should be free to participate on equal terms with private sector companies in this expansion;
- * that BT's customers should be relieved of the need to finance investment through charges, where this could be done by the markets;
- * that BT's customers should benefit from free and fair competition in the supply of telecommunications services.

Already, telecommunications is being liberalised. Arrangements are being made for users to have a choice:

- of network - Mercury and the private sector radio telephone companies will give business and some other users a choice of telephone company for their calls;
- of services - users will have a choice of company when they want a service provided over the telephone;
- of apparatus - users will have the choice of whether to buy or rent most of their telecommunications apparatus, from BT or other suppliers.

The present Bill will take the process of liberalisation to its logical conclusion.

PROVISIONS OF THE BILL

Ownership

BT will be changed from a nationalised industry to a public limited company, BT plc. All its existing assets and liabilities will be transferred to the successor company. In Autumn 1984 the Government plans to sell 51% of its shares.

Monopoly

The present exclusive privilege of BT to run the telecommunications system will end. BT and the other operators will run under licences issued by the Secretary of State, and BT will no longer have powers to license other operators. One rival, Mercury, has already been licensed under the British Telecommunications Act, 1981, and expects to begin operating soon.

License Provisions

BT's licence will contain safeguards to prevent the company from abusing the monopoly that it is likely to enjoy in the provision of most telephone services before competition develops. These safeguards have been strengthened by the Government's acceptance of the main proposals of the Littlechild Report, which examined ways of curbing

BT's monopoly after privatisation. These were announced in the House by Mr. Kenneth Baker, Minister for Information Technology on 7th February. The main points are:

- a) BT will have a duty to provide a telephone service throughout the country. Rural areas need not fear being deprived of their service. At the moment BT thinks (its accounts are drawn up in such a way that it cannot be sure) that the rural services, which are easier and simpler to run than their urban counterparts, are profitable. Should this cease to be the case the services will be safeguarded by the income BT will derive from the access fees it will charge Mercury, the radio-telephone networks, and Hull for the right to interconnect with its system.
- b) Income from the access fee will also be used to run the 999 emergency service, which is free, and the call box service. BT acknowledges that it loses about £80 million on the latter. BT will have a duty, imposed by the licence, to maintain these 'social services'.
- c) BT will be obliged to keep price increases for installation charges, domestic rentals and local calls to a figure fixed below the Retail Price Index for five years. This will ensure a continuing reduction in the real cost of telephone services to the consumer, and a spur to continuing improvements in BT's efficiency. These regulations will be policed by OFTEL, the new Office of Telecommunications that is being set up to monitor BT.
- d) BT will lose its present monopoly of the first telephone in each home or business. Customers who have standard sockets will be free to purchase or rent their phone from the supplier they choose.
- e) Mercury, the private telecommunications service that the Government has licensed to compete with BT, will have the right to interconnect with BT (see above), as will any other competitors.
- f) The maintenance of new equipment will be opened to competition by the Department of Industry. BT will be able to offer its own service, on a fair commercial basis.
- g) The Bill also provides for the Telegraph Acts, most of which date from the nineteenth century, to be replaced by a new Telecommunication Code, which will provide for telecommunication operators to be authorised to install their plant in private land, streets etc. The Code has been drafted so as to make sure that no person should unreasonably be denied access to a telecommunications system because of difficulties in connecting his home or business to a public telecommunications system.
- h) The Bill also seeks to amend some provisions in the Wireless Telegraphy Acts.

Cable TV

The new Bill contains a new section, Part 1V, which updates and replaces the existing provisions in The Post Office Act, 1969. on the licensing of cable TV services. These new licensing arrangements are an interim measure as it is likely that responsibility for this will eventually pass to the new Cable Authority. It is necessary to amend the Post Office Act in advance of the Cable Bill in order to remove BT's present exemption from licensing, and thereby fulfill the Government's intention of placing BT on an equal footing with its competitors.

BT RESULTS

	<u>1978-9</u>	<u>1979-80</u>	<u>1980-1*</u>	<u>1981-2</u>
Turnover £m	3,243.9	3,558.9	4,554.2	5,708.1
Profit/(loss) £m	336.4	129.1	123.9	457.8
Capital requirement £m	1,045.8	1,352.1	985.0	1,837.6
Self-financing ratio	106.1	79.2	111.9	88.8
Capital employed £m	11,995.1	13,540.1	14,574.6	15,285.4

Return on capital
employed at replacement
cost:

Target	%	6.0	5.0	5.0	5.0
Achievement	%	6.9	4.6	4.4	6.5

Tariff index (1970 = 100)
adjusted for inflation

	82.6	74.0	76.8	82.5
--	------	------	------	------

*Accounting policies were modified in 1981, so some figures are not strictly comparable.

The results and accounts for 1982-3 are due out on Wednesday July 20th.

The Corporation reduced its real unit costs by an average of 2.9% pa in the four years 1978-9 to 1981-2, and the figure in 1981-2 was 2.1% below that in 1980-1. The target set in 1978 (currently under review) was a reduction of 5% pa. over the five years 1978-9 to 1982-3.

CAPITAL PLANS

The target real rate of return for 1982-3 and 1983-4 is 5½%. The EFL for 1982-3 has been revised to £310 million, and capital expenditure in 1982-3 will be £1.59 billion. The EFL for 1983-4 has been set at minus £100 million. BT's capital expenditure programme for 1983-4 will be substantially less at £1.72 billion than was earlier expected - partly because the recession has reduced the demand but also because BT has been able to negotiate lower contract prices and pay settlements.

POINTS TO MAKE

Rural Areas

1. Rural Services will not be rundown. BT will have a duty, enforced by OFTEL (see below) to provide a universal service. Anyone who has or wants a telephone will be able to get it. In the new Bill Clause 3 which incorporates this duty, has been redrafted to make it clearer that the requirements to safeguard the rural and other socially necessary services which the bill places on the Secretary of State and the Director General of Telecommunications are statutory duties.

2. Charges for Rural Services. BT indicates that the rural services are probably profitable. If they do make a loss they will be financed by the access fees, in the same way as the call box and 999 services. At present BT have a standard rate for rentals and local calls throughout the country, and after privatisation BT will be prohibited by its licence from unfairly discriminating against rural customers.

3. Installation Charges. At present BT charges £70 for a domestic connection, and there is no extra charge for the first 100 hours of work needed. Last year only 0.1% of all installations required more than this. The Bill strengthens the hand of the potential rural customer by allowing him to complain to OFTEL if the installation charge is higher than the standard one. OFTEL can instruct BT to

reduce the charge if the Director decides BT is asking too much. At present POUNC can take up these complaints, but it has no powers over BT. So the new arrangements strengthen the rights of the potential rural customer.

4. Remote call boxes. If a box produces less than £185 per annum it becomes a candidate for closure since the maintenance costs are about £2000. BT closed 32 boxes in 1979-80, 30 in 1980-1 and 63 in 1981-2. Local authorities have the power to pay a subsidy towards the maintenance of uneconomic boxes and 7 are so maintained in Wales, maintenance of the call box service will be a social obligation of BT under this Act. This is the first time that this obligation has been imposed by law. The losses on the service will be financed by the access fees (see above), and the provision of call boxes will continue as at present.

Consumer Protection

Prices: The introduction of competition is an effective curb on prices; BT has already reduced charges on its 100 most densely used trunk routes and on many international calls. Following liberalisation there was also a significant reduction in the price of telex teleprinters. However, the Government accepts that BT will dominate some telecommunications sectors. Because of this BT will be obliged to keep price increases for domestic rentals, installation charges and local calls to a figure priced below the Retail Price Index for five years. This will ensure a continuing reduction in the real cost of services.

OFTEL: The Post Office Users National Council (POUNC) will no longer deal with telecommunications once BT enters the private sector. A new Office of Telecommunications (OFTEL) will take over these responsibilities. OFTEL will be charged with policing BT's licence and, unlike POUNC, will be able to enforce the remedies it suggests for consumers problems.

Legal Redress: At present BT does not normally provide services under contract and customers cannot normally sue BT for negligence etc. The Bill requires BT to provide services under contract and removes, in most cases, immunity from civil action. Customers will be able to sue BT just as, for example, they can sue shops which supply faulty goods. In order to ensure that BT complies with its licence, and to prevent anti-competitive activities by BT, the new Bill sets out clear provisions for anyone (including BT's competitors) to seek unlimited damages in the courts for losses they incur if BT or any other licensee fails to comply with an order by the Director General of Telecommunications.

The Disabled: A new provision in the Bill recognises the needs of the disabled, both those working as telephonists and the disabled or elderly domestic subscriber. It will allow the Government to fund the cost of developing variants of standard equipment to make it suitable for disabled users. This, combined with standards requiring equipment to be adaptable to the needs of the disabled, and the grants already available from the Manpower Services Commission for carrying out the actual adaptation of the equipment, should go a long way to allay the unfounded and misleading fears raised in some quarters about the effect of privatisation on the disabled.

The Sale

The precise method of sale will be decided in the light of market conditions at the time. The issue will be the largest ever carried out in this country. The Government hopes that many of BT's 250,000

employees and 13 million subscribers will buy shares. Ways of encouraging them are being considered.

The Articles of Association of BT plc will prevent foreign or domestic takeovers. The claims of BT, the pre-1969 pension deficiency and the taxpayer will be considered in relation to the proceeds of the sale. It is hoped that the sale will take place in Autumn 1984.

The Workforce

Telecommunications is a major growth area. The removal of restrictions on financing will allow BT to take maximum advantage of this, along with the other telecommunications firms. There should be more, not fewer, jobs in the industry.

There has been talk of a cut of 45,000 in BT jobs. It is certainly true that BT does need to improve its efficiency. It could provide the present level of services with fewer people. However the BT Bill offers chances to expand the service.

The telecommunications manufacturing industry has lost 40,000 jobs in the last ten years. That shows that the mixture of monopoly and protection does not pay. Since liberalisation, the prospect of an expanding industry has opened up:

1. On the equipment side, new market entrants, such as Mitel, GTE/Ferranti & Harris, have already put down plants and are generating new jobs in manufacturing. Retailers such as Discoms, Tandy and many other smaller people are already expanding into the liberalised market and are recruiting new staff.
2. Value added services will provide a whole new industry. An increasing number of businesses wish to provide new services on the network and these are expected to provide many new jobs. The recently announced 'Total Access' radio telephone system, to be provided by two companies, Racal and a new consortium BT-Securior, is expected to produce up to 12,000 jobs by 1990.
3. Mercury itself will create new jobs as well as pull through more on the supply side. BT in response has created new posts to provide competitive digital services.

The legislation will safeguard existing employee pension rights, and will in no way disadvantage employees or weaken their pension position. The Government cannot guarantee how pension arrangements will evolve in the future, even in the nationalised industries.

POLITICAL POINTS

* Nationalisation has had an unhappy history in this country. It has cost over £40,000m at today's prices in grants and capital write-offs since the war (Hansard, 9th November 1982, Col.456). Nor is it popular. A survey by NOP in August 1982 showed that 65% of the electorate and 35% of Labour voters want no more nationalisation. The recent Labour manifesto contained sweeping proposals for further nationalisation, but during the actual campaign Labour leaders tried to play these down.

The nationalised industries' record of service to the customer has often been patchy and their prices have risen more rapidly than prices as a whole. In February 1983, for instance, the overall rate of inflation was 5% but in the public sector it was 13%. Nor in the long run does

nationalisation protect jobs. Under the last two Labour Governments about 200,000 jobs disappeared in coalmining and about 40,000 jobs at BSC went during the 1974-1979 Labour Government.

Some of the practical day to day problems that have beset BT as a nationalised industry are illustrated by the following extracts from a letter sent by its Chairman to his staff in December 1981:

'In the past management hasn't laid sufficient emphasis on labour efficiency and output....'

'...over 40 per cent of field supervisors' time is spent on paperwork. There's more emphasis on reporting up than on securing useful and timely information for the work in hand'.

'We've been hampered by things like inter-union arguments on operating computer terminals in mixed clerical/engineering work areas...'

'...For every two hours spent on installation in the field, one hour is spent in control, line plant allocations and replacements. The number of survey officers has remained unchanged for 20 years, although the need for them has reduced. In America, AT & T installation and maintenance staff average seven visits a day, compared with our average of three'.

'....despite reductions in such things as travelling time over the last two years (ineffective time) still represents 40 per cent on cost'.

'In exchange maintenance, studies show that manning levels could be reduced by better work organisation'.

'Then there's grade drift - people being paid a grade or so higher than their work deserves'.

'The problems are compounded by:

- demarcation problems;
- inflexible work practices;
- rigidity on manning levels; and
- slowness to accept changes'.

'A succession of surveys show that BT salaries are generally above the average; at best, they're near the very top of the market'.

'In addition to the staff's contribution of 6% of salary, BT also contributes to the Pension Fund at the rate of 15½% - much more than most other large organisations'.

'There are many other ways in which the business overspends, eg:

- THQ staff has grown by over 10 per cent since 1978.
- Over 30 per cent extra SSS staff (half of them in THQ) in the same period.
- There are 25,000 THQ staff, some 8,000 RHQ staff, to say nothing of Area HQs.
- Over-generous accomodation, compared with commercial firms, particularly with so may HQ staff in London.
- Slow and expensive promotion and appointments procedures, with seniority often more influential than merit'.

* The recent Labour Manifesto paid lip service to the need for technological development but at the same time made clear that Labour would only really countenance it provided:

1. That it can be nationalised. Their Manifesto promised not only to retain BT in the public sector, but to forcibly incorporate Mercury into it and then extend the resulting monopoly by giving it the exclusive right to provide cable TV and other cable services. It also promised that Labour would establish a significant public stake in electronics - a pledge that could cost up to £12 billion if the country's top seven electronic companies were to be nationalised.
2. That it can be placed under the control of the unions by making it subject to new technology agreements dictated by them. Labour's luddite instincts are never far from the surface, in their Manifesto they said:

'new technology has brought major job losses in some sectors. Only Labour can plan new technology to meet our commitment to full employment'.

The real objective of new technology agreements is to increase the powers of trade unions and ensure that new technology is not allowed to disturb the employment patterns on which their system is based. This was made clear in Labour's Programme 1982, which was endorsed by last year's Labour Conference and formed the basis for the 1983 Manifesto. It said:

'Trade unions have been relatively successful over the post-war period in extending joint control over day-to-day decisions in their enterprises. Although progress has been uneven, they have in many places extended the frontier of negotiation beyond terms and conditions of employment to include issues formerly within the managerial prerogative. Among these issues are the organisation and pace of work; staffing levels; recruitment and deployment of labour; demarcation and labour flexibility; quality, stock and financial control; grievances and discipline; and health and safety. Workforce influence in these areas has been enlarged mainly through developments in the scope of collective bargaining. Much of the impetus for these developments has come in recent years from the negotiation of New Technology Agreements. These have been accompanied by significant changes in trade union structure. The shift to plant and company bargaining has led to the growth of Joint Union Committees which have strengthened the ability of workforce representatives to pressurise management on key issues relating to the organisation of production'.

The recent experience of the printing industry's attempts to negotiate new technology agreements with the unions is not encouraging. If other unions were enabled by a Labour Government to exercise a similar veto over developments in their industries the results would be disastrous.

* British Telecom's performance under the last Labour Government was notably lacklustre and contrasts strongly with its performance since 1979. BT's profits have increased rapidly from £123.9 m in 1979-80 to £457.8m in 1981-2. This has been achieved at the same time as tariff increases have been kept below inflation, rebates introduced for low users and many charges for trunk and international calls reduced. When BT is privatised it will continue to hold many of its price increases below inflation (see above). This compares with the

situation under the last Labour Government when charges for local calls doubled in their first year in office, and charges in general rose by 60 per cent between 1975 and 1976 alone.

Furthermore under Labour BT was starved of investment whereas under the Conservatives investment has increased substantially.

Capital Requirement £m

Outturn

1976-7	1977-8	1978-9	1979-80	1980-1	1981-2	1982-3
816	844	993	1,215	1,545	1,898	1,590*

*estimate

ALLIANCE VIEW

The SDP-Liberal alliance take the view that it is irrelevant whether industry is state owned or privately owned and that therefore, as Mr William Rogers has put it, 'a further programme of privatisation...is wholly irrelevant to the major economic and industrial needs of the country' (Hansard, 9th November 1982 Col. 464). In their recent Manifesto the Alliance argued in favour of leaving the present boundaries between the State and private sectors exactly where they are and said the Government should concentrate instead on making the nationalised industries more efficient. They also put forward a scheme of committees and commissions which they hoped would succeed where all others have failed, and would accurately simulate the pressures of the market. This, however, flies in the face of all past experience for, as Mr Patrick Jenkin, the then Secretary of State for Industry, has said:

'Anyone who argues in the light of nearly 40 years' experience that there must be a way of managing State monopolies that will increase their efficiency, satisfy their customers and yield a return on the taxpayers' investment instead of being a burden on the taxpayer must believe in fairies...Every device has been tried and none has solved the fundamental problem of the State industries...The system has failed. Are we to sit back and do nothing about it?' (Hansard, 9th November 1982, Col. 457)

The problem of the nationalised industries is not just one of management but also one of ownership. The three fundamental weaknesses in the public trading sector - monopoly, finance and accountability - are all primarily questions of ownership. The Alliance ignores these problems when it argues that BT's status should remain unchanged.

RE/AM
12.7.83

file



855
Post + Telegram

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

Thank you for your minute of 23 June covering a copy of a note which Lord Weinstock has sent to the Secretary of State for Trade and Industry outlining alternative proposals for the privatisation of British Telecommunications. I have shown this to the Prime Minister, who has noted it.

This matter was mentioned by the Secretary of State for Trade and Industry to the Prime Minister on Friday, before she had seen Lord Weinstock's note. The Prime Minister and Mr. Parkinson agreed that it would introduce an unacceptable delay into the privatisation of British Telecommunications if a change of course were to be adopted now: it would, however, be consistent with the present legislation to produce separate accounts for the various regions of British Telecommunications, which could provide a basis for comparison and a measure of competition.

E. E. R. BUTLER

27 June 1983

MR

010

4



Prime Minister

Mr. Parkinson mentioned

Her to you this morning.

Ref. A083/1807

MR BUTLER

FERS

23.6.

[Handwritten signature]

Lord Weinstock has sent me a copy of a note which he has sent to the Secretary of State for Trade and Industry outlining alternative proposals for the privatisation of British Telecommunications, which seem to Lord Weinstock preferable to the provisions of the Bill introduced in the last Parliament.

2. The Prime Minister may like to glance at --- the note, a copy of which I attach.

[Handwritten signature: R+A]

ROBERT ARMSTRONG

23 June 1983

STRICTLY PRIVATE & CONFIDENTIAL

To double

CABINET OFFICE	
A	5563
21 JUN 1983	
FILING INSTRUCTIONS	
FILE No.	_____

S. R. Angus

20th June, 1983

Further to our brief discussion on the telephone on Thursday, I enclose a note with some alternative proposals in concise form for the privatisation of British Telecommunications, which seem to us very much preferable to the provisions of the Bill at the end of the last Parliament.

Lord Weinstock

The Rt. Hon. Cecil Parkinson, MP.,
Ashdown House,
123, Victoria Street,
LONDON, S.W.1.

Enc.

TELECOMMUNICATIONS ACT 1983/84

The two principal objectives of this Act appear to be (a) to take BT financing out of the PSBR, and (b) to promote competition in the supply of telecommunications services to users.

The Telecommunications Bill 1983 would have achieved the first of these aims, although almost certainly with some delay because the sheer size of BT makes it indigestible to the market as a single morsel.

Increased competition would not have been achieved by the creation of a de facto private monopoly in the place of a public monopoly, and would undoubtedly have been that much more difficult to handle; such detail of the proposed licence as has been made public does nothing to allay the apprehension to which this state of affairs gives rise.

It is, however, possible to achieve both the stated objectives under the following proposals without the dangers inherent in the old Bill:-

- (1) the main network, up to the connection point in a subscriber's premises, is retained as an entity under the management of British Telecommunications. This national network would be obviously self-financing and not a drag on the PSBR. It could be retained in public ownership, or sold off in due course, as you choose;

/.....

(ii) Mercury continues its development as currently envisaged, with full inter-connect facilities to the BT network. This ensures as much competition as is practicable in the provision of network services,

(iii) the rest of the BT business is sold to bidders, or placed through the market, as a single lot or in separate parts, largely comprising British Telecom Enterprises and BT's Area Sales outlets, which would need restructuring, this is in any case necessary to prevent anti-competitive cross-subsidisation (not necessarily only financial) by BT.

This is the part of the business with which users most commonly deal. It would be completely privatised, and in demonstrably fair and open competition with other companies offering equipment and services,

(iv) BT maintains public call boxes, rural and emergency services; this presents no great difficulty,

(v) BT is prevented by the terms of its licence from providing subscriber's equipment,

/.....

which eliminates the very real danger under the proposals of the old Bill that BT will naturally achieve an increasingly strong monopoly position.



Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

Legend
✓
NBPM

15 June 1983

The Rt. Hon. Cecil Parkinson MP
Secretary of State for Industry and Trade

John Cow

MERCURY

I have seen Patrick Jenkin's minute of 6 June to the Prime Minister. I agree with the proposal to make an early announcement that Mercury should be free to provide the full range of international services independently from British Telecom; and I would be entirely content with a statement on the lines of the draft attached to Patrick's letter.

I am sending a copy of this letter to the Prime Minister, to other members of E(TP) and to Sir Robert Armstrong.

NIGEL LAWSON

*John
Nigel*

Post office,
Picture of
Post office Pt 7

17 JUN 1983



CONFIDENTIAL

JD



10 DOWNING STREET

c Ho.
Lpo.
HMA
Trade + Industry
Melisshan-DTI.
CO

From the Private Secretary

13 June 1983

MERCURY

Mr. Jenkin minuted the Prime Minister on 6 June, proposing that the Government should announce its decision that Mercury should have freedom to provide the full range of international services independently from British Telecom.

The Prime Minister saw this minute over the weekend, and the draft statement attached thereto. She has agreed, subject to the views of her colleagues, for this statement to be issued after the weekend.

I am sending a copy of this letter to the Private Secretaries to other members of E(TP) and to Sir Robert Armstrong.

M. C. SCHOLAR

Jonathan Spencer, Esq.,
Department of Trade and Industry.

10



PRIME MINISTER

MERCURY

I entirely agree with Patrick Jenkin's proposal in his minute to you of 6 June that an early statement should be made on Mercury's access to international services. The logical case for allowing Mercury such access seems to me indisputable : it makes no sense to deny international telecommunications users the benefits of competition which we are rightly keen that internal users should enjoy. Given the very strong presence which BT will continue to exert in the market, it is important to take every opportunity available to increase competition. I need hardly add that any improvement in the quality or reduction in the cost of international communications can only be of assistance to our exporters.

I appreciate that there is still the tactical question of when the announcement should be made, bearing in mind the vigorous reaction which BT as well as the POEU have been threatening. However, this opposition will have to be faced sooner or later, and there are surely positive advantages in facing it immediately after the Election, quite apart from Mercury's commercial need to have the position clarified as soon as possible.

Copies go to members of E(TP).

A.C.

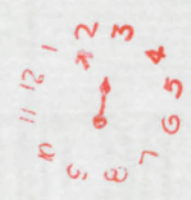
LORD COCKFIELD

DEPARTMENT OF TRADE
1 Victoria Street

9 JUNE 1983



1983



o/r

CONFIDENTIAL

cc Mr. Owen

CF/ pps pl (in box ?)

MCS 9/6

MR. SCHOLAR

MERCURY

Patrick Jenkin's memorandum of 6 June is, in my view, entirely right. International Telecommunications are the most rapidly growing sector of telecom services generally. And there are many opportunities for competition and innovation. A number of American companies engaged in a full range of international services are growing rapidly.

There will be some considerable problems, as is recognised in para 5. BT will have to be told that they must give normal interconnect arrangements and access to cables. But I don't think that needs to go into the draft statement.

ALAN WALTERS
8 June 1983

CONFIDENTIAL

JH 811



PRIME MINISTER

MERCURY

SEN 0

B1

(4)

Prime MinisterAgree, subject tocolleagues, for Mrsstatement to be issued
after the weekend?

MCS 6/6

Yes

You will recall that it was agreed at the meeting you held on 26 April that Sir Michael Edwardes should be asked informally not to press for interconnection with BT until after the General Election and that the statement on Mercury's international services, which had been envisaged for end-April, should also be delayed.

2 Kenneth Baker has since held two meetings with Sir Michael, who has agreed not to press for interconnection until 20 June. However, he has emphasised strongly the need to move very quickly after the Election on both interconnection and on Mercury's international role if the company is to have the credibility it needs to continue building up its order book and to justify the scale of investment underway. It will be for Mercury to pursue the matter of interconnection directly with BT, though we must give them our full support. However, the company need an early statement by Government about their international status if they are to be in a position to sign contracts with US carriers with whom they are apparently close to agreement.

3 At present Mercury has an agreement on international services with BT whereby it can provide its customers only with private



leased lines as an agent for BT. However, leased lines traffic is small and would not by itself yield an adequate return on the company's planned investment in international facilities (eg an earth station in Docklands). Mercury therefore needs the freedom to provide switched circuits on a normal public service basis to serve the needs of its customers. Moreover, because Mercury's domestic network will take time to build up to national coverage, it will want to use BT's network for the distribution of incoming calls. Mercury also sees a need for access on a commercial basis to transatlantic cables owned or planned by international carrier consortia in which BT is the current UK participant.

4 I have also consulted Sir George Jefferson. BT management are more strongly opposed to international liberalisation than any of the actions we have taken hitherto and have produced a number of economic, industrial and practical arguments to support their case, although these are not wholly convincing. We must also expect strong opposition from the POEU. However, our policy is to open up the telecommunications market to competition wherever possible and I am clear that we must now give Mercury the chance to compete fully in international services.

5 It is not, of course, our intention to favour Mercury at BT's expense. It will be for Mercury to negotiate the necessary agreement with overseas carriers on a normal commercial basis. We shall only intervene overseas where it is necessary for us to explain our policy and Mercury's role. Similarly, Mercury will



need to have commercial negotiations with BT on interconnect arrangements and access to international cables, though here we shall need to be vigilant that BT does not adopt an obstructive attitude with the aim of preventing Mercury from realising its legitimate commercial aspirations.

6 In the immediate future, Mercury requires only a brief public statement on the lines of the draft attached. This will give them the authority needed to conclude agreements with willing US carriers and to talk to European PTTs. But in substance it does not go very much further than Kenneth Baker's statement of 7 February.

7 I appreciate the difficulties of considering a matter of this sort at the present time. However, I hope that you and colleagues will agree to the issue of this statement as soon as possible after 9 June. Apart from Mercury's need for it, there would be tactical advantage in moving soon after the Election.

8 If this is agreed, Sir George Jefferson will need to be informed of our decision and consulted on the statement before it is issued. It would also be advisable to talk to the POEU after the Election.

9 I am sending copies of this note to members of E(TP).


PJ.

P J

6 June 1983

DRAFT STATEMENT

In Kenneth Baker's statement to the House on 7 February on the 1988
Littlechild Report, he said that the Government accepted that
the current restrictions on Mercury's supply of international
services should be eased. Since then we have held further
discussions with both Mercury and British Telecom. In the
light of these discussions the Government has decided that
Mercury should have freedom to provide the full range of
international services independently from British Telecom.
It will be for Mercury to negotiate links with overseas
operators on a normal commercial basis. In this connection,
we have advised the International Telecommunication Union that
Mercury has been accorded the status of a Recognised Private
Operating Agency.



Post & Telecom : Pay in Post Office
April 1960

URGENT TELETYPE

6 JUN 1960

1 2 3 4 5 6 7 8 9 10 11 12

In March 1959 the Government decided to...
...the current restrictions on Mercury's...
...services should be ended. Since then we have held further...
...discussions with both Mercury and British Telecom. In the...
...light of these discussions the Government has decided that...
...Mercury should have freedom to provide the full range of...
...international services in conformity with British Telecom...
...It will be for Mercury to negotiate links with overseas...
...operators on a non-exclusive basis. In this connection...
...we have advised the International Telecommunication Union that...
...Mercury has been awarded the status of a full-fledged private...
...Operating Agency.

Goldman Sachs International Corp. | 162 Queen Victoria Street | London EC4V 4DB, England
Tel: 01-248-6464 | Telex: 887902 | Cable: GOLDSACHS LONDON

Thomas L. Rhodes
Vice President

Goldman
Sachs

Robin Butler Esq
10 Downing Street
London SW1

9th June, 1983

PA
Mr. Scholar - to see

Dear Robin,

attached folder

I enclose a memorandum describing our thoughts on the privatisation of British Telecom.

John Whitehead and I hope to meet with Alan Walters on the afternoon of June 22nd to discuss this further.

Yours sincerely,

Justy

Thomas L Rhodes

CC 210

2



From the Secretary of State

Michael Scholar Esq
Private Secretary
10 Downing Street
London
SW1

Prime Minister

(Sir G Jefferson is

being asked to reconsider

16 May 1983

his decision.)

→

Dear Michael,

M/S 16/5

BRITISH TELECOM'S PROPOSED PURCHASE OF SWEDISH TELECOMMUNICATIONS EQUIPMENT

Thank you for my copy of your minute on this subject to Jonathan Spencer, dated 6 May.

There is more than an element of disingenuity in BT's current proposal, the effect of which is to penalise GEC and Plessey for delays which are significantly of BT's own making. In principle of course there is merit in introducing an element of competition into BT procurement - the oligopoly arrangements prevailing in the past have been a major factor in UK telecommunications companies' poor export performance. But this is a singularly ill-timed initiative in present circumstances.

Our immediate and pressing concern lies with the damage any announcement that BT is severing its special commitment to System X would have on the current efforts by GEC and Plessey to sell System X in India and China. Both campaigns are at a delicate stage, with key decisions imminent. The companies, with good support from BT, have played heavily on the fact that System X can depend on the continuing commitment of BT, ensuring high production volumes and state-of-the-art technical updating. The loss of this argument would very dangerously jeopardise the change of winning these two crucial orders. Beyond these immediate prospects Ericssons are probably the major international competitor for System X. The Swedish company would be bound to make the most of this apparent lack of confidence in all future sales.

If BT were to proceed down their present path, my Secretary of State is anxious that BT should make no public indication of their plans until definite decisions have been made. Even if the Ericsson deal should go ahead, it is imperative that BT should clearly reiterate their commitment to the UK industry and its products.

Copies of this go to the recipients of your letter.

Yours sincerely,

JOHN RHODES
Private Secretary

Part 1 Telegram
Future of P.O.
of B.T. Part 7

6 MAY 1983
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CONFIDENTIAL

cc HO
LPO
CST
D/T
M/S Ind. (Baker)
CO

BM



10 DOWNING STREET

From the Private Secretary

6 May 1983

Dear Jonathan,

British Telecom's purchase of
Swedish Telecommunications Equipment

B/F | The Prime Minister was grateful for your Secretary of State's minute of 5 May. Mrs. Thatcher strongly agrees with the views expressed in paragraph 6 of your Secretary of State's minute - that BT must bear a substantial part of the blame for the delays in the System X development programme, and cannot now be allowed to walk away from that responsibility. She has commented that if BT went ahead with the proposed course of action they would attract criticism, not only within Parliament and within the industry, but also from the Government. The Prime Minister hopes that Sir George Jefferson will reconsider his decision, and has indicated that if necessary, she would see Sir George herself.

I am copying this letter to the Private Secretaries to the other members of E(TP) and Sir Robert Armstrong.

Yours sincerely,

Michael Scholar

Jonathan Spencer, Esq.,
Department of Industry

CONFIDENTIAL



CONFIDENTIAL

*1 a few very
shortly with
and must work
Govt do re-consider
decision
will be better
than*

NO

Prime Minister

*There would be fierce
criticism of this.*

mes/s/s

PRIME MINISTER

BRITISH TELECOM PURCHASE OF SWEDISH TELECOMMUNICATIONS EQUIPMENT

Sir George Jefferson has informed me that BT intend to purchase significant quantities of digital telephone exchanges from the Swedish manufacturer L M Ericsson. The Ericsson exchanges are directly competitive with our own System X and would be manufactured at the factory which they own jointly with Thorn-EMI in Scunthorpe. An additional 730 jobs would be created but some of these would be at the expense of jobs in GEC and Plessey. BT's action is likely to attract criticism both within Parliament and in the industry.

and from the fact.

2 At the end of last year we agreed to a major restructuring of the arrangements for the development and manufacture of System X. STC left the consortium and BT handed over the design authority to Plessey with GEC acting as a sub-contractor. Market sharing is being replaced by competitive procurement between Plessey and GEC. These arrangements are beginning to work. Plessey now have the development programme back on course and the first volume orders have been placed by BT. However, Plessey have inherited a programme which, under BT's supervision, underwent several fundamental design changes and was slipping badly behind the revised target completion dates. Whilst that slippage seems to have been stopped, - indeed there has been some clawback - it



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is impossible for Plessey to complete such a major programme before the end of next year, although some exchanges will be delivered this year.

3 BT recognise that the promised delivery dates are the best that can be achieved in the circumstances but they consider that this performance is inadequate to meet their own commercial needs. BT intend to respond to competition by introducing digital switching into the major business centres well in advance of Mercury and propose to start the installation of digital exchanges in July next year. The System X development programme should be well advanced by that date and the British suppliers argue that they could meet BT's requirements. However, these timescales would allow for no margin of error in the development programme and would not permit the inevitable bugs to be sorted out on trial exchanges. BT feel therefore that the risk of placing themselves solely in the hands of Plessey and GEC is unacceptable. They also point out that France, Germany and the USA have all chosen at least two switching systems to spread the risk and ensure genuine competition. BT's proposal is that whilst limited deliveries of System X should start this year they should in parallel begin volume deliveries from Ericsson which would build up to a plateau in 1987. Thereafter they anticipate that Ericsson would supply 10% of their requirements with GEC and Plessey competing for the remaining 90%. There is of course no guarantee that the Ericsson share would be held at 10%. BT have also



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negotiated some limited reciprocal opportunities for GEC and Plessey, including an opportunity to sell to the Ericsson operated telephone company in Argentina and an agreement not immediately to enter the US market for certain types of exchanges.

4 I have told Sir George Jefferson that this proposal is unwelcome to the Government. For his part he has made it clear to me that his Board is determined to see the early introduction of a second system to compete with System X. If we were to refuse to accept this proposal Sir George would be likely to bide his time until BT cease to be a nationalised industry when we would have no formal powers to prevent BT going ahead. Meanwhile, BT could continue discussions with Ericsson with a view to ensuring that the proposed delivery dates could still be met.

5 There is some substance to BT's case. The performance of GEC and Plessey is likely to be improved if the BT market is not wholly guaranteed to them. They need incentives to become more competitive and attack world markets. Whilst BT are exaggerating the threat of competition from Mercury it is hard to argue that they should not behave in a thoroughly commercial manner now that they are losing their monopoly. Furthermore, business users would benefit from the most rapid rate of network modernisation that is possible.



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6 On the other hand, BT must bear a substantial part of the blame for the delays in the System X development programme. They cannot now be allowed to walk away from that responsibility. This order will do serious damage to System X's international reputation at a time when we are on the shortlist for winning a major order in India. BT's reputation amongst other PTT's is high and this move will improve Ericsson's standing whilst raising doubts about BT's commitment to System X. Both Plessey and GEC are likely to criticise BT and the Government publicly. All this will provide ammunition for critics of the BT Bill who have argued the liberalisation and privatisation threaten the supply industry.

7 We therefore have a difficult decision to make. The logic of our policies of encouraging BT to behave commercially means that the supplying industry can no longer expect to enjoy a captive home market. Past protection reared an industry which became increasingly uncompetitive and complacent. The suppliers are at last putting their house in order and Plessey in particular are aggressively establishing System X in the US market. Whilst I would have preferred to give the companies longer to adjust to the new environment I believe that System X should be expected to face competition at home - providing that there are satisfactory reciprocal arrangements to allow GEC and Plessey access to other markets. I therefore intend to ask Jeffrey Sterling (who as you know was involved in the

Those who ordered part of equipment - held GEC Plessey back. There is no more now to be done here do you think I will be able to do this

✓✓✓



BT/GEC/Plessey/STC restructuring discussions last year, and has the confidence of the UK parties concerned) to hold talks with Ericsson with a view to extracting a much better reciprocal deal for British industry. I also propose to ask Sir George Jefferson to refrain from any public announcement while these talks are taking place. At the same time I shall with BT explore the possibility of finding an alternative supplier to Ericsson with a larger home market and consequently more obvious prospects of reciprocity. BT are already in discussion with Siemens in Germany but I would not rule out talks with either a French, US or Canadian company. However, BT are strongly of the opinion that only Ericsson can meet their delivery dates and I am consequently not hopeful of concluding a suitable deal with any other company.

8 I am copying this to other members of E(TP) and to Sir Robert Armstrong.

J. Spencer

MP P J

5 May 1983

PATRICK JENKIN

(approved by the Secretary of State
and signed in his absence)

Department of Industry

MAY 1983

Post & Telecom

Future of the Post office Pt



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PRIME MINISTER

POEU INDUSTRIAL ACTION

①

Kenneth Baker rang this evening to say that he had seen Michael Edwardes alone this afternoon and had put it to him that a crisis in an Election period would be awkward and unpredictable, and that the Government very much wished to avoid it. Michael Edwardes was understanding, but also worried about his company's performance. They have a Board Meeting on 16 May. Michael Edwardes will be at the NSPCC reception tomorrow. He enquired what your view was. Kenneth Baker told him that you had not been involved, but that he would brief you.

Mr. Baker thinks that it would have a considerable impact on Michael Edwardes if tomorrow evening you simply said to him that you thought it important to avoid a crisis in an Election campaign (if there is to be an Election).

MCS

4 May 1983



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434

*ceX50
Post e Tels*

The Rt Hon Patrick Jenkin MP
Secretary of State for Industry
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1E 6RB

*NBPM
MLA 3/5*

3 May 1983

Dear Patrick

Thank you for your letter of 27 April about your proposed amendments to the Telecommunications Bill.

What you propose should, I believe, give sufficient protection to highway authorities and I welcome and accept the amendments. I also welcome what you propose with regard to consultation within Government which I assure will enable Transport Departments to suggest any conditions which might be attached to licences before your Department comes to a firm view on whether the Telecommunications Code should be applied in a particular case.

I note that your officials will be discussing with mine the text of the amendments. I take it that the amendments will include a charging provision as proposed in the sixth paragraph of my letter to you of 21 March. I agree that they need to be tabled as soon as possible.

Copies of this letter go to those who received yours.

*Yours
David*

DAVID HOWELL



Secretary of State for Industry

DEPARTMENT OF INDUSTRY
 ASHDOWN HOUSE
 123 VICTORIA STREET
 LONDON SW1E 6RB
 TELEPHONE DIRECT LINE 01-212 3301
 SWITCHBOARD 01-212 7676

Christy *cc NO*
 27 April 1983

The Rt Hon David Howell MP
 Secretary of State for Transport
 Department of Transport
 2 Marsham Street
 London SW1P 3EB

Dear David,

TELECOMMUNICATIONS BILL

Thank you for your letter of 20 April. I have also seen Nick Edwards' letter of the same date.

2 I think the main difference between us is how interested parties, including highway authorities, are told that consideration is being given to the possibility of the Telecommunications Code being applied to a particular operator and are given the opportunity to comment or object. You have suggested that the present wording of Clause 9 of the Bill can be read as meaning that, before a notice was issued, I would have made up my mind in favour of granting a licence.

3 I would like to help you on this point and I suggest that Clause 9(2) and (6) should be amended so that the Telecommunications Code cannot be applied to any person unless the Secretary of State had previously published a notice:-

- a) stating that he had received an application that the Code should be applied to the person named in the notice;
- b) specifying the geographical area in respect of which it has been proposed that the Code be applied to that person;
- c) inviting representations or objections within not less than 28 days about:
 - i) whether or not the Code should be applied to that person and in that area; or
 - ii) whether, if the Code were to be applied to that person, this should be done subject to any conditions and exceptions.

4 The Secretary of State would be, as now, under a duty to consider any representations or objections which were duly made and not withdrawn.



5 This consultation procedure would be in substitution for the procedure now set out in Clause 9(6) for implementation after the Secretary of State had reached a preliminary view that he proposed to grant a licence. I hope you will agree that this new arrangement would make it clear that I had not made up my mind before a notice was issued. All interested parties would be given an opportunity to comment not only about whether the Code should be applied but also on the conditions and exceptions which might be imposed on the prospective licensee including those to protect the environment. It follows that, if we amend the Bill in this way, I would consult you and other colleagues after a notice had been issued and representations received and before a licence applying the Code was granted. We would then all know the objections, if any, of the highway authorities. Their objections etc would be taken fully into account.

6 I have considered carefully your idea that some form of special provision should be made for highway authorities but, as Kenneth Baker explained in his letter of 12 April, highway authorities really are only one among the many interests affected by the Code. We could not argue that a highway authority, which does not normally own the highway in which cables are placed and whose interests are in any case protected by the Public Utilities Street Works Act, should have special treatment not accorded to a National Park authority or to a landowner whose property rights are directly affected by the Code. However, I am willing to make an additional provision that publication of the notice should be both in the Gazettes and in such a manner as the Secretary of State considers appropriate for the purpose of bringing it to the attention of those who might be affected if the application were granted. Under this provision the Secretary of State will have no option but to ensure that the notice was seen by any affected highway authority.

7 The Lords Committee will reach Clause 9 early in May and I have asked that amendments should be prepared to delete highway authority licensing powers and to amend Clause 9 on the lines indicated above. The texts will be discussed with your officials. I hope you can accept that amendments should be tabled by the end of this week.

8 Since you copied your letter to E(TP) colleagues I am sending them copies of this letter and of the earlier correspondence. Copies of this letter also go to George Younger, Nick Edwards and Jim Prior.

*Yours
Ratch*

CC NO



Y GWYDDFA GYMREIG
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Oddi wrth Ysgrifennydd Gwladol Cymru The Rt Hon Nicholas Edwards MP

From The Secretary of State for Wales

RECEIVED IN
S.O.S. FOR
INDUSTRIES OFFICE

20 April 1983

De Pen

1983 IV 20 14:19

I have carefully followed your correspondence with David Howell and George Younger which culminated in their letters to you dated 21 and 29 March respectively about the effect which the Telecommunications Bill may have upon road users. I must say at the outset that I find myself sympathetic to their views; there is, I believe, a distinct possibility that if consultation with highway authorities is not made obligatory the exploitation of the new technology in telecommunications which we all seek may be interpreted as an attack upon the right of road users to travel safely and without undue hindrance. This would be an undesirable reaction to our initiative.

As you know I have direct experience of this from my negotiations with Mercury Cables about their proposal to use the route of the M4 motorway for extending their telecommunication cable system into South Wales. I am very enthusiastic about allowing them to do so, but at the same time I am taking great care to ensure that this precedent will not endanger or hinder the users of the motorway. Consultation, with me in this instance, is very valuable in striking a mutually acceptable balance between different possible uses of the highway and, as George Younger has pointed out, useful in a presentational context for those of us charged with keeping the highway safe.

/...

The Rt Hon Patrick Jenkin MP

TOM Ellison	COPIES TO
FOR ADVICE (AND	Mr Baker
DRAFT REPLY IF	Mr Butler
APPROPRIATE)	see
PLEASE BY: Noan	Mr Croft
26/4	W Solomon



I urge you then to take on board the proposal to consult highway authorities before coming to a decision on licencing. I am content for you as licencing authority to be, as suggested by George Younger, responsible for the consultative mechanisms. Should you feel that a discussion is necessary then I will be happy to take part.

/
Copies of this letter are sent to David Howell, George Younger and Jim Prior.

Jim Prior

David Howell

—

CONFIDENTIAL

NBPM

hex.

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

01-212 3434



The Rt Hon Patrick Jenkin MP
Secretary of State for Industry
Department of Industry
Ashdown House
123 Victoria Street
LONDON SW1E 6RB

20 April 1983

Dear Patrick

In your absence abroad, ^{att} Kenneth Baker replied on 12 April to my letter of 21 March about the provisions in the Telecommunications Bill authorising telecommunications operators to install their apparatus in highways. ^{att}

I do not think at this stage that it is particularly useful to go back to last summer and try to disentangle who agreed to what and precisely what was meant. What matters is that the present position is not satisfactory in relation either to my responsibility for trunk roads or to the responsibility of local highway authorities for their roads. We must together try to find a way forward to achieve the proper balance between the interests of telecommunications operators on the one hand and those of road users and highway authorities on the other which would be directly and damagingly affected by the appearance of many more operators with a right to dig up the roads.

The present position is that Clause 9(6) of the latest print of the Bill states that

"Before granting a licence which applies the Telecommunications code, the Secretary of State shall publish a notice stating that he proposes to apply the Code to that person."

The effect would be that, by the time the highway authority heard of the proposal, you would already have taken up a position in favour of granting the licence. The highway authority would only be able to make representations or objections against an agreed position. This seems to be likely to be even more the case where new cable systems are being installed; as the draft White Paper, which Willie Whitelaw has just circulated, states

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"the key decision must be that of the award of the franchise by the Cable Authority and the presumption will therefore be that an application to the Secretary of State for Industry by the franchises for a licence to run a telecommunications system will be successful."

The proposal with regard to licensing cable systems makes it even more important that highway authorities should be invited to state their views at an early stage and to have them considered. They should also have an opportunity of making representations which could, if considered reasonable, be attached as conditions to the licence.

Kenneth Baker says that it is difficult to single out highway authorities as a special case. But highways are the economic arteries of this country: we are spending over £2,000 million a year of public money to extend or maintain them; over 80 per cent of all freight is carried by road and over 90 per cent of all passenger journeys are by road. The disruption to traffic and damage to road surfaces caused by existing statutory undertakers is bad enough and we are looking at the legislation to see whether it can be strengthened to reduce present disruption. The present Bill, coupled with the proposals for cables, could create many more operators with a statutory right to install their apparatus under roads.

I said in my last letter that I was prepared to withdraw my earlier proposal that highway authorities should retain their existing right to licence telecommunications operators to make use of their roads. But my withdrawal of that proposal was conditional on your accepting this less radical one: that highway authorities should be consulted and given an opportunity to express their views before you take up a position with regard to granting the licence and that their reasonable representations should be taken into account in considering the conditions to be attached to licences. At present, as I understand it, S.181 of the Highways Act is applied unintentionally in the Bill. There would certainly be strong opposition in the Lords to removing that provision unless some real concession had been made to the views of the highway authorities.

I trust that you will now agree to the amendment to the Bill which I have proposed; if not, we must have an early meeting with other Ministers who have highway responsibilities, as suggested in my letter of 21 March. Accordingly I am copying this letter to Nicholas Edwards, George Younger and to James Prior as well as to members of E(TP).

20 APR 1983



Can

David

DAVID HOWELL



FROM THE
MINISTER OF STATE
FOR INDUSTRY AND
INFORMATION TECHNOLOGY

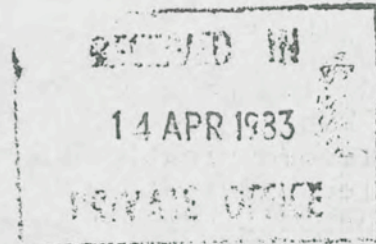
KENNETH BAKER MP

DEPARTMENT OF INDUSTRY
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TELEPHONE DIRECT LINE 01-212
SWITCHBOARD 01-212 7676

12 April 1983

The Rt Hon David Howell MP
Secretary of State for Transport
Department of Transport
2 Marsham Street
London SW1P 3EB



Ken Baker

TELECOMMUNICATIONS BILL

In his absence abroad, Patrick Jenkin has asked me to thank you for your letter of 21 March about the provisions in the Telecommunications Bill authorising licensed telecommunication operators to install their apparatus in highways. George Younger also wrote on 29 March.

2 I am sure that there is no difference of substance between us. We are all committed to our agreed policy on telecommunications and on the need to avoid placing too much restriction on operators. We are agreed on the need to strike a balance between the interests of telecommunications users on the one hand and the interests of the highway authorities and road users on the other. We also agree that operators licensed by the Secretary of State should not require additional licences from highway authorities. The only real questions are how we ensure that interested parties, including (but not only) highway authorities, have an opportunity to comment and how we take account of their comments before actually granting a licence to a telecommunications operator to exercise the powers of the Telecommunications Code.

3 Before turning to these question I would like to clear away some points which arise in the first part of your letter. We agreed last summer only to take a power to fix conditions in licences but we have yet to consider whether we should in fact use those powers or what the conditions should be. I have yet to receive any suggestion that the licences we grant to BT and Hull should include any conditions about highway surfaces or that when, as I propose, the Telecommunications Code is applied to



Mercury, its licence should contain such conditions. Also the arrangements, which we decided not to alter and under which highway authorities are able to license the placing of telecommunications lines in highways, have always been an alternative to Telegraph Act powers (and to the new power for the Secretary of State and his successors to apply the new Telecommunications Code) rather than a replacement for them.

4 There may also have been some misunderstanding of the proposal that we should consult you, George Younger, Nick Edwards and Jim Prior before using these licensing powers. What I have in mind is that before we publish a notice under Clause 9 of the Telecommunications Bill about a proposal to apply the Telecommunications Code to an operator we should consult you amongst other Cabinet Members so that the decision to publish is a collective one. At the same time we would need to consult Tom King, George Younger, Nick Edwards and Jim Prior about the impact of a licensing proposal on the environment generally, Michael Heseltine about telecommunications installations near defence establishments, Willie Whitelaw about the impact on wireless telegraphy and so on. I was not envisaging, as George Younger seems to suggest, that this consultation would deal only with highway matters or that there would be any consultation at that stage with other highway authorities or any outside interests. In my view it would be wrong to use a consultation among Cabinet members as the occasion to engage in limited external consultation. It would also be politically unwise because a wide range of other interests, which are affected just as much as the highway authorities, would object strongly. What we intend is that any decision to commence the procedures to apply the Telecommunications Code would be a collective one and, because you and other colleagues happen to be highway authorities in your own right, the collective discussions would not leave highway considerations out of account.

5 The procedures in the Bill, which have been significantly amended since the local authority associations first wrote to us, already provide full safeguards for ascertaining the views of highway authorities. Under Clause 9(6) we do not announce a hard and fast decision to apply the Telecommunications Code to an operator; instead the Secretary of State is required to publish a notice stating what he proposes to do and the reasons why he intends to do it. He is required to specify a minimum period for people to make representations and objections about his proposal and he is required to consider any representations or objections which are made. Thus highway authorities in common with all other interested parties are to be given a full opportunity to make representations. This consultation is not an empty formality since the Secretary of State is under a duty to consider any representations they, or other interested parties, may make.



6 Against this background I am convinced that your proposal for a two-stage consultation is unnecessary to protect the interests of highway authorities. You do not say what purpose the consultations with the highway authorities would serve. Two-stage consultations would add considerably to the bureaucracy and delay of licensing and a two-stage process of consultation - one with highway authorities and a second with everyone else - would be unwise in terms of good administration.

7 Moreover, a proposal to single out highway authorities would be discriminatory and politically controversial. I realise that the installation of apparatus in highways is important for your interests but I would ask you to accept that highway surfaces are not the most significant aspect of the Code. For example, the Code authorises the installation of posts and overhead wires, which are of abiding interest to environmental interests and planning authorities generally, including those responsible for conservation areas, National Parks and Areas of Outstanding Natural Beauty. They, however, will be consulted only under the Clause 9 procedures. Similarly, the Code provides for the compulsory installation of apparatus on private land but there is no provision for special consultation with farming interests, who are concerned about pole lines across fields, or other landowning interests. Again, the Code has special provisions about installing apparatus on the land of railway and canal undertakings and in harbours; all of those concerned have an excellent case for special consultation.

8 Against this background I could not justify an amendment to the Bill which introduced special two-stage consultative procedures to benefit highway authorities (who in any case have the special protection of the Public Utilities Street Works Act) but which made no special procedure for other interests. There is already considerable pressure from other interest groups for amendments to the Bill to provide for special consultations. I have resisted this on the grounds that all interests should be treated fairly and that a concession to one group would rapidly become a concession to all. Once we specify that one group is to receive special attention the list would rapidly become very long. I think we must stand on that position.

9 As you request, I shall not reply to the local authority associations until we have reached agreement. Time is, however, pressing. We need to prepare amendments to the provisions in the Bill about the Highways Act which will need to be tabled in the Lords shortly and we need to deal with the new point which you have raised about the charging provision. I should therefore be grateful if you would accept that we cannot go forward with the idea about two-stage consultations. If,



nevertheless, you want a meeting I suggest that I should submit a paper to E(TP).

10 Copies of this letter go to Nicholas Edwards, George Younger and Jim Prior.

Truman

Kenn Str

KENNETH BAKER

● PART 6 ends:-

~~s/s Gnduty to s/s Trade 25/3~~
s/s Scottish office to s/s Ind 29/3

PART 7 begins:-

~~s/s Gnduty to s/s Trans 22/4~~

