



From the  
Minister of State  
for Consumer Affairs

Mr Kenneth Baker MP  
Minister of State for Industry  
& Information Technology  
Ashdown House  
123 Victoria Street  
London SW1E 6RB

Dear Minister

#### TELECOMMUNICATIONS BILL: CLAUSE 41

I am writing to draw your attention to the effects of this Clause which will now be reached on Tuesday or Thursday.

The Clause would not only continue an existing privilege which BT have over their customers but extend it to all public telecommunications operators. I am advised that it alters the basic common law situation and shifts the burden of proof from the plaintiff to the defendant (the customer) in cases which come before the courts when a customer refuses to pay his telephone bill on the grounds that it is excessive.

At E(TP) on 30 June last year Patrick Jenkin, describing the shape of the Bill stressed that, as a Companies Act company, BT should cease to enjoy its present statutory privileges. The Sub-Committee agreed he should prepare an appropriate Bill in consultation as necessary with other Ministers. In an exchange of correspondence last November Patrick Jenkin (1 November) and Arthur Cockfield (11 November) agreed that the Bill should end the privileges which BT currently enjoys in its dealings with subscribers and that the rights of BT's customers must be secured.

This Clause - particularly Subsection (1) - appears to go against the general line agreed. The relevant Note says that the Clause is necessary because it is difficult for a telecommunications operator to demonstrate that his systems are secure enough to prevent errors and because, as a consequence, it would be sotly for him to present a satisfactory case in court. This line of argument is not particularly convincing.

Following your letter of 28 September to me, our respective officials are jointly exploring whether it will be feasible to introduce a scheme to supervise and control the design, operation and maintenance of telephone metering systems. With or without Clause 41, this

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Prime Minister

This is a very poor letter.

But if true, it reveals an  
unacceptable position.

28 February 1983 I will pursue

with Mr Baker's office.

M/S 1/3

Yes - in writing  
please

telephoned  
Mr Baker's  
office  
+ Mr Jenkin's  
2/3/83  
M/S

cc BIA

cc SV

(2)

Solely?





would be a useful step to take. Whatever the outcome on those discussions, however, those proposals do not remove the objection in principle to Company Act telecommunications operators having this statutory privilege over their customers.

Looking at the pattern of complaints from consumers I must admit that this does not seem to be known to many nor does it seem to influence decisions on whether to let disputes go to court. However we felt you would want to consider the point at least. If you do agree you could let the Clause fall when it is reached.

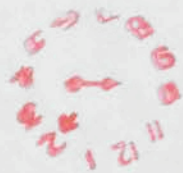
I am copying to the Prime Minister and to other members of E(TP), to John Biffen and to Michael Jopling.

*Yours sincerely*

*Peter Waller*

*for* Gerard Vaughan  
(Approved by the Minister  
and signed in his absence)

Form of PO: Post & Telecom R76



14 - MAR 1983





FROM THE  
MINISTER OF STATE  
FOR INDUSTRY AND  
INFORMATION TECHNOLOGY

KENNETH BAKER MP

Dr Gerard Vaughan MP  
Minister for Consumer Affairs  
Department of Trade  
1 Victoria Street  
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Prime Minister

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Clause 42 is the clause  
which was alleged to place the

25 March 1983

burden of proof for incorrect  
changing onto the consumer instead  
of BT. MCI 29/3

Thank you for your letter of 15 March about Clause 41 of the Telecommunications Bill (now Clause 42 in the print of 10 March) which continues an arrangement provided in earlier telecommunications legislation but adopts it to the new structure of telecommunications. I have also received letters from Gordon Borrie and from POUNC, both of whom press for Clause 42 to be removed from the Bill.

Because of the strength of feeling on this Clause, I have decided to write to Sir George Jefferson to advise him that I am considering withdrawing the Clause in the House of Lords. This will give him an opportunity to comment before we take action, and I suggest that we should take a final decision on the exclusion of the Clause from the Bill when we see what he has to say.

Meantime, I understand that good progress has been made on the drafting of the new Clause on the approval of metering systems. My officials hope to have a draft to show to yours within the next day or two. I have instructed my officials not to include the connection between Clause 42 and the approval of metering systems so that there need be no complications should we decide to remove Clause 42. I hope that you will agree that the new Clause on metering should be taken at Report on 28 March.

It would certainly be my intention that officials should explore in due course the question of which body should carry out the approvals and the number of staff required. I do not think this need hold up the provision in the Bill of the power to approve metering systems.

I am sending a copy of this letter to the members of E(TP), to John Biffen, Michael Jopling and to Gordon Borrie.

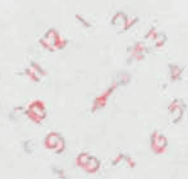
KENNETH BAKER

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PTC

25 MAR 1983



28 MAR 1983





From the  
Minister of State  
for Consumer Affairs

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Mr Kenneth Baker MP  
Minister of State for Industry  
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Ashdown House  
123 Victoria Street  
London SW1E 6RB

15/16 March 1983

*Dear Kenneth*

TELECOMMUNICATIONS BILL CLAUSE 41

Thank you for your letter of 3 March. I am glad to see that, fundamentally, you share my view on this Clause. Although I understand your difficulties, I nevertheless believe that, on balance, it would be best not to press it.

The point that concerns us both is that, in effect, the consumer as defendant will have to prove that his telephone bill is wrong (in other words, that he is not liable) and, unless he takes special steps, he will have no opportunity to question anybody from the company.

It is clearly against the interests of consumers and against the general policy agreed by Patrick Jenkin and Arthur Cockfield. For example you explain that you need to extend the arrangements to other public telecommunications operators so that BT is not placed in a privileged position compared with its competitors. You see the present arrangements as giving BT an advantage over its customers which would create unfairness with its future competitors if they are not put in the same position. But surely the answer to this problem is to remove the privilege from BT, not extend it to other operators.

I can see that possibly the inadequacies of the systems of BT and other operators could make it difficult for them to rely on a witness providing evidence. But if they are to be Companies Act companies why should they not be faced with that discipline? To argue that excusing them this will save them money seems contrary to our reasons for privatisation. The normal discipline of the commercial world should lead them to put their own house in order.





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It is because of these considerations that I see the development of better metering systems as complementary to the removal of Clause 41 rather than as linked to its retention.

On the question of better metering arrangements, are you sure that the monitoring system envisaged would necessarily require the use of Government manpower? Officials have agreed that it is technically feasible to have such a system but have estimated that it would probably need about 30 staff. I am advised that this is possibly an over-estimate. If you do go ahead then I hope you will agree to a study by officials, to consider more fully than has been done so far, which part of the government machine is best fitted to take on the administrative and technical tasks in question.

I am copying to recipients of the previous correspondence.

A handwritten signature in dark ink, appearing to read 'Gerard Vaughan'.

GERARD VAUGHAN

PosteTel  
Future of  
the Post Office  
p. 6

11 5 MAR 1983

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FROM THE  
MINISTER OF STATE  
FOR INDUSTRY AND  
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KENNETH BAKER MP

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6401

3 March 1983

*Dear Minister,*

TELECOMMUNICATIONS BILL: CLAUSE 41 AND METERING

Thank you for your letter of 28 February about the linked issues of metering automatic use of telecommunication services and the procedures to be used in Court to prove that sums are due to public telecommunication operators for the services they have provided. Your letter arrived when I was on the point of writing to you about my detailed proposals on metering.

The working group of officials, which was established following my letter to you of 25 September last year, has confirmed that suitable arrangements can be made for approving the design and subsequent operation of the metering systems used by public telecommunication operators. Satisfactory arrangements can also be made to monitor and secure compliance with these arrangements. All these arrangements will be under the control of Ministers or the Director General of Telecommunications and thus quite independent of British Telecommunications and other operators. Matters have progressed so well that instructions for Parliamentary Counsel are now being prepared and I expect us to be able to introduce amendments to the Bill shortly.

Further work needs to be done, however, on the details of the arrangements and on the resources to be devoted to establishing and monitoring the metering arrangements. This will take some time to complete and proper metering arrangements cannot be brought into force until well after the Bill as a whole comes into effect.

The absence, at least in the short term, of independently verified telephone metering systems means that we have to continue for the time being with the long established arrangements set out in Clause 41 of the Bill. These as you say make it easier for the telephone operator to establish that sums

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are due to him than is the case with other services.

Clause 41 continues to place the burden of proof on the plaintiff rather than the defendant, ie the subscriber, but this has been the case under previous legislation, and does not appear to have been a source of complaint, nor is there evidence of this working to the disadvantage of subscribers in the past. But some such arrangement is necessary both because of the nature of telecommunication services and because of the existing arrangements for metering. Unlike gas and electricity, where there is a homogeneous supply of measurable quantities, in a single direction, telecommunication charges depend on the person who initiates a call, when in the day the call is originated the destination to which the call is addressed, whether the call is answered by the subscriber to whom it is addressed and the duration of the call. An indication of the problems of measuring telephone services can be seen in the fact that, until recently, people who fraudulently used telecommunication systems could only be prosecuted for stealing electricity, although this of course represented only a fraction of the value of the service provided. Telephone meters are fundamentally different from other meters and the approval arrangements which our officials have discussed concern the approval of systems as a whole rather than simply the approval of an individual dial-type meter.

Telephone metering arrangements also cause their own problems. Apart from the fact that it measures a complex service, a customer's meter is not activated when the customer lifts his own telephone; instead it is activated remotely when the telephone to which the call is addressed is lifted by a different customer. This means that meters must be located in the exchange where individual customers do not have access. In consequence customers have no objective way to check their actual consumption of telecommunication services and some arrangement where the operator informs the court about the meter reading is inevitable. The alternative to a certificate would be the attendance of witnesses in Court but, since they would merely say the same as was stated on the certificate, there would be no additional protection to the individual consumer but significant additional cost to the operator and hence to the generality of consumers.

In these circumstances the arrangements in Clause 41 are not a "privilege" as you suggest but a matter of practicability. Clause 41 applies equally to all public telecommunication operators and BT is not placed in any privileged position compared with its competitors. The arrangements are quite separate from the "exclusive privilege" of running telecommunications systems which BT currently enjoys by virtue of section 12 of the British Telecommunications Act and which Patrick Jenkin mentioned in his E(TP) paper last June. We are of course abolishing the statutory "exclusive privilege" under Clause 2 of the Bill.





Fundamentally, however, I share your distaste for Clause 41 as it stands and would like as soon as this is practicable to enhance consumer protection by qualifying the operators' ability to produce certificates in Court. I propose that we link the arrangements in Clause 41 to the approval of metering systems; once metering arrangements have been approved Clause 41 would only apply where both the operator conformed with the standards set by the Director and the Director's monitoring showed that this was indeed the case. If an operator's system failed to meet the standards, he could not rely on a certificate in Court. This arrangement could not, however, commence for several years.

I hope you can agree both to the metering arrangements agreed by officials and to my proposed amendment of Clause 41.

We also need to press ahead with the administrative and technical arrangements for metering and to decide in particular who should carry out the approval and subsequent monitoring. In view of your concern about consumer protection and metering generally, it seems to me that this task should be carried out by the staff of the National Weights and Measures Laboratory who could be appointed as sub-contractors by the Director General of Telecommunications. Their experience in similar tasks would be of great benefit to the success of the project and would reassure consumers. The operators would of course meet the costs of approvals, monitoring etc but the staff members would I think need to count against the Department of Trade's manpower total. It is, however, too early to make a detailed estimate of the staff resources involved.

I am sending a copy of this letter to the recipients of yours.

Yours sincerely

Neil McKenna

for

KENNETH BAKER

approved by the Minister,  
and signed in his  
absence.

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Post Office, Pt 6

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FROM THE  
MINISTER OF STATE  
FOR INDUSTRY AND  
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KENNETH BAKER'S OFFICE

Michael Scholar Esq  
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*Prime Minister*

*(2)*

*Not as bad as first it appeared to be.*

*Ms 3/3*

*3* March 1983

*Dear Michael*

Thank you for your letter of 2 March, following up our conversation last night on Clause 41 of the Telecommunications Bill.

You will by now have seen Mr Baker's reply to Dr Vaughan's letter of 28 February. As stated there, Clause 41 continues to place the burden of proof on the subscriber, but this does not change the position as it now stands under existing legislation, which has not been the cause of any complaint from customers, and there is no evidence that it has worked to the disadvantage of the consumer. Some arrangements on the lines of Clause 41 are necessary because the metering of telephone use presents problems which do not exist in the case of gas or electricity metering. Telephone meters are not on customers' premises, where they can be read by the subscriber. Some form of certification procedure is needed to demonstrate that meters have actually recorded the number of call units for which the customer has been charged.

If a customer complains that his telephone bill is excessive, the Bill introduces a number of new safeguards. First there will be an entirely new, and independent arrangement for verifying that telephone metering systems are accurate and that they are operated fairly from the customer's point of view. These arrangements do not exist at present and will take a little time to introduce. We will be introducing amendments to Clause 41 shortly to cover this.

If a customer thinks his bill is excessive, he will be able to complain to the Director General of Telecommunications, who will have new powers not only to investigate complaints but also to order the telephone company to take corrective action. There will also be a code of practice, similar to the one which exists

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at present, under which anyone who complains that a telephone bill is excessive will be able to have his complaint examined in detail and if necessary submitted to independent arbitration without the expense of having to take legal action.

The procedures in Clause 41 will only apply where someone has failed to pay a telephone bill which is properly submitted and seeks payment for telephone calls actually made. Without Clause 41 it would be very much more difficult for any telecommunications operator to obtain a court judgement against a customer who defaulted on payment, and the extra cost of producing witnesses, who would in any case be unable to add much to the evidence represented by the certificate of use, would add to the cost of the telephone service and increase the bills of those who paid on time.

I attach for information a copy of Clause 41 as drafted at present.

I am copying this letter to recipients of yours.

*Yours sincerely*  
*N M McMillan*

N M McMILLAN  
PRIVATE SECRETARY



Poste 725.  
Future, p. 6



## PART II

Documentary evidence as to sums due for services.

41.—(1) A certificate of a public telecommunications operator that a specified sum is due to him from a specified person under an agreement with respect to telecommunication services provided by the operator shall (subject to any term of the agreement to the contrary), in any proceedings instituted by the operator against that person or his personal representatives or against the operator by that person or his personal representatives, be evidence (and, in Scotland, sufficient evidence) of that fact. 5

(2) In any proceedings instituted by or against a public telecommunications operator to which the rate at which a charge was levied at any time, in respect of a service, by a person outside the United Kingdom is material, a certificate of the operator that the charge was levied at that rate at that time in respect of that service by that person shall be evidence (and, in Scotland, sufficient evidence) of that fact. 10 15

Power of local authorities to contribute towards provision of facilities.

42.—(1) Where a local authority consider that it would be for the benefit of the whole or any part of their area that—

(a) any additional telecommunication facilities should be provided; or

(b) any existing telecommunication facilities should continue to be provided, 20

by a public telecommunications operator, whether within or outside the area to be benefited, the authority may undertake to pay to that operator any loss he may sustain by reason of the provision or continued provision of those facilities. 25

(2) In the application of this section to Scotland, nothing in subsection (1) above shall authorise the giving of an undertaking as respects the provision or continued provision of facilities outside the area to be benefited.

(3) In this section "local authority"— 30

(a) in relation to England and Wales, means a county council, the Greater London Council, a district council, a London borough council, the Common Council of the City of London, a parish council or a community council; 35

(b) in relation to Scotland, means a regional, islands or district council;

(c) in relation to Northern Ireland, means a district council.

Interpretation of Part II.  
1973 c. 41.

43. In this Part—

"the 1973 Act" means the Fair Trading Act 1973; 40

"modifications" includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;



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POST AND TELECOMS,

10 DOWNING STREET

From the Private Secretary

2 March 1983

Dear Neil,

Telecommunications Bill: Clause 41

The Minister of State for Consumer Affairs sent the Prime Minister a copy of his letter to your Minister of 28 February about Clause 41 of the Telecommunications Bill.

As I mentioned to you on the telephone earlier today, the Prime Minister would be grateful for clear advice as to whether Clause 41 of the Bill alters the law, shifting the burden of proof from the plaintiff to the defendant in cases which come before the courts when a customer refuses to pay his telephone bill on the grounds that it is excessive.

The Prime Minister has commented that if this is the case, she is opposed to this Clause.

I am sending copies of this letter to the Private Secretaries to the other members of E(TP), to David Heyhoe (Lord President's Office), Murdo Maclean (Chief Whip's Office) and Richard Hatfield (Cabinet Office).

Yours sincerely,

Michael Scholten

Neil McMillan, Esq.,  
Department of Industry.

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