



Secretary of State for Industry

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DEPARTMENT OF INDUSTRY
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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of State would be, as now, under a duty to consider any representations or objections which were duly made and not withdrawn.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 Gazette 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*



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The Rt Hon Patrick Jenkin MP
Secretary of State for Industry
Department of Industry
Ashdown House
123 Victoria Street
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*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

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Oddi wrth Ysgrifennydd Gwladol Cymru The Rt Hon Nicholas Edwards MP

From The Secretary of State for Wales

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INDUSTRIES OFFICE

20 April 1983

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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

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|-----------------|-----------|
| 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.

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Copies of this letter are sent to David Howell, George Younger and Jim Prior.

Jim Prior

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N. P. R.

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DEPARTMENT OF TRANSPORT
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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 franchisees 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

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David

DAVID HOWELL





FROM THE
MINISTER OF STATE
FOR INDUSTRY AND
INFORMATION TECHNOLOGY

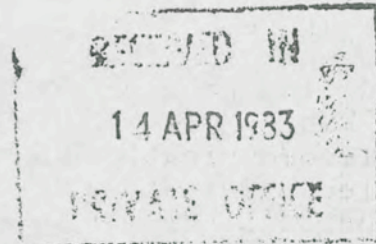
KENNETH BAKER MP

DEPARTMENT OF INDUSTRY
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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.

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Kenn Str

KENNETH BAKER