

CONFIDENTIAL

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

CONFIDENTIAL

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.
- ✓
ms

DLP

DAVID PASCALL

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

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

10
9
8
7
6
5
4
3
2
1



DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215
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

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.

