

Payphone access: ensuring free-to-caller access from payphones

Final Statement and Notification

Issued: 11 February 2005

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Section 1

Summary

Purpose of this Statement

- 1.1 In July 2004 Ofcom published a consultation document on the proposed discontinuation of licence condition 48 in relation to payphone access (http://www.ofcom.org.uk/consult/condocs/bt_kingst_ppa/bt_kingst_ppa/). Having carefully considered the responses to that consultation, Ofcom has decided to:
1. Discontinue former licence condition 48 (a specific regulatory requirement on British Telecommunications plc (“BT”) and Kingston Communications (Hull) plc (“Kingston”) to provide payphone call origination on reasonable request to persons running telecommunications services).
 2. Publish formal undertakings received from BT and Kingston:
 - To provide Freephone Service Providers (“FSP”)¹ with access from their public and managed payphones to their ‘free-to-caller’ services.
 - To ensure that the charges levied for the provision of the necessary interconnection services, including in particular the Payphone Access Charge (“PAC”) are transparent, cost-orientated, not unduly discriminatory and sufficiently unbundled to ensure that nothing unnecessary is included.
 - That BT will continue to offer to enter into commercial arrangements with other payphone providers who operate public and managed payphones at various locations throughout the UK for the collection and distribution of any PAC payments due to them, on terms that are not unduly discriminatory. BT undertakes to publish the charges and other terms and conditions for this service.
 - That Kingston will, on reasonable request, establish a service for the collection and distribution of the PAC, the costs of which will be fully transparent.
 - That in the event of a dispute arising regarding those commercial arrangements, BT and Kingston will (a) continue to collect and distribute the PAC on the agreed terms until such time as the dispute has been resolved to both parties’

¹ For the purpose of these undertakings a FSP is any service provider offering publicly available services using a 0500, 0800 or 0808 number range.

satisfaction; and (b) on the request of any other party to the dispute, submit the dispute for resolution.

1.2 The nature of the undertakings has been agreed with BT and Kingston, taking into account the interests of all relevant persons. Ofcom considers that the formal undertakings by BT and Kingston provide safeguards to ensure that:

- FSPs continue to offer access to their services from payphones;
- Payphone users have access to free-to-caller services, including a range of competitive services, from both public and managed payphones;
- Payphone providers have a mechanism which allows them to receive payment for the provision of free-to-caller services from their payphones.

1.3 Ofcom does not anticipate that BT and Kingston will renege on these commitments, but if they were to do so Ofcom retains the discretion to impose regulatory obligations in future.

Next steps

1.4 Upon publication of the Discontinuation Notices in Annex 2 to this document, continued provision Condition 48 in BT and Kingston's Continuation Notices is discontinued in its entirety. It is replaced by the formal undertakings in Annex 3, which take immediate effect.

Section 2

Regulatory background and process

Ofcom and the new regulatory regime

- 2.1 A new regulatory framework for electronic communications networks and services entered into force in the UK on 25 July 2003. The basis for the new Framework is five new EU Communications Directives that are designed to create harmonised regulation across Europe. Four of these Directives have been implemented in the UK via the Communications Act 2003 (the "Act"). The fifth Directive, on Privacy and Electronic Communications, was implemented by a set of Regulations under the European Communities Act 1972 on 11 December 2003. The Act provides for functions, powers and duties to be carried out by Ofcom which include, inter alia, functions, powers and duties flowing from the four EC Communications Directives referred to above. Certain functions carried out by legacy regulators were also transferred to Ofcom on 29 December 2003.
- 2.2 When the new EU communications regime was implemented in the UK on 25 July 2003, individual licences granted under section 7 of the Telecommunications Act 1984 were replaced by the general authorisation regime which includes General Conditions of Entitlement which apply to all persons providing Electronic Communications Networks ("ECNs") and Electronic Communications Services ("ECSs"), or all such providers of a specified description. Additionally, individual communications providers may be subject to specific conditions, such as those imposed as a result of a finding of Significant Market Power ("SMP Conditions"), conditions necessary to secure end to end connectivity ("Access Related Conditions"), or conditions imposed as a consequence of a provider being designated as a universal service provider ("Universal Service Conditions").

Continued licence conditions

- 2.3 The new Directives require National Regulatory Authorities ("NRAs"), inter alia, to carry out reviews of competition in communications markets to ensure that regulation remains appropriate in the light of changing market conditions. For a limited period, while those reviews were being conducted and/or until new SMP conditions were imposed, some of the licence conditions which existed before 25 July 2003 continued in force by virtue of Continuation Notices which have been made by Ofcom's predecessor, the Office of Telecommunications ("OfTel"). These continuation notices can be found on the Ofcom website http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/cont_notices/index.htm
- 2.4 Ofcom has consulted separately on proposals to discontinue all licence conditions and interconnection directions which were continued on a temporary basis, except for those specific provisions in specific markets listed in the consultation as exceptions (<http://www.ofcom.org.uk/consult/condocs/Prop1984tele/>). One of those exceptions is continued licence condition 48. Condition 48 applies both to BT and Kingston. It requires BT and Kingston to meet reasonable requests for interconnection, including the provision of telecommunications services, in

respect of the markets for fixed public telephone networks and fixed public telephone services (which include the provision of public payphones) from persons running telecommunications systems. It follows therefore that BT and Kingston are required to offer payphone call origination interconnection services on the reasonable request of other communications service providers, including indirect access service providers (“IASPs”). Under Condition 48.3, BT and Kingston must secure that the charges for those interconnection services are:

- Transparent and cost-orientated.
- Justifiable where they differ in different circumstances.
- Sufficiently unbundled to ensure that nothing unnecessary is included.

2.5 Condition 48 has been discontinued in its application to BT and Kingston in respect of services covered by the following market reviews:

- Review of Wholesale International Services (Final Explanatory Statement and Notification, 18 November 2003)
(http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/wis1103.pdf)
- Review of Fixed Geographic Call Termination markets (Final Explanatory Statement and Notification, 28 November 2003)
(http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/Eureviewfinala1.pdf)
- Review of the Fixed Narrowband, Wholesale Exchange Line, Call Origination, Conveyance and Transit Markets (Final Explanatory Statement and Notification)
(http://www.ofcom.org.uk/legacy_regulators/oftel/narrowband_mkt_rvw/fixednarrowbandstatement.pdf) (“Fixed Narrowband Review”)

and the condition will be discontinued in its entirety upon publication of this Statement.

2.6 Having carefully considered the views of stakeholders, together with the regulatory options available (as outlined in section 4 of the July consultation) Ofcom concludes that the most appropriate mechanism to replace continuing licence condition 48 is to secure formal undertakings from BT and Kingston, which capture the following:

- (i) To provide access to ‘free-to-caller’ services from their public and managed payphones.
- (ii) To secure that the charges levied for the provision of the necessary interconnection services, including in particular the PAC are transparent, cost-orientated, not unduly discriminatory and sufficiently unbundled to ensure that nothing unnecessary is included.
- (iii) That BT will continue to offer to enter into commercial arrangements with other payphone providers who operate public and managed payphones at various locations throughout the UK for the collection and distribution of any PAC payments due to them, on terms that are not unduly discriminatory. BT undertakes to publish the charges and other terms and conditions for this service.
- (iv) That Kingston will, on reasonable request, establish a service for the collection and distribution of the PAC, the costs of which will be fully

transparent.

- (v) That in the event of a dispute arising regarding those commercial arrangements BT and Kingston will (a) continue to collect and distribute the PAC on the agreed terms until such time as the dispute has been resolved to both parties' satisfaction; and (b) on the request of any other party to the dispute, submit the dispute for resolution.

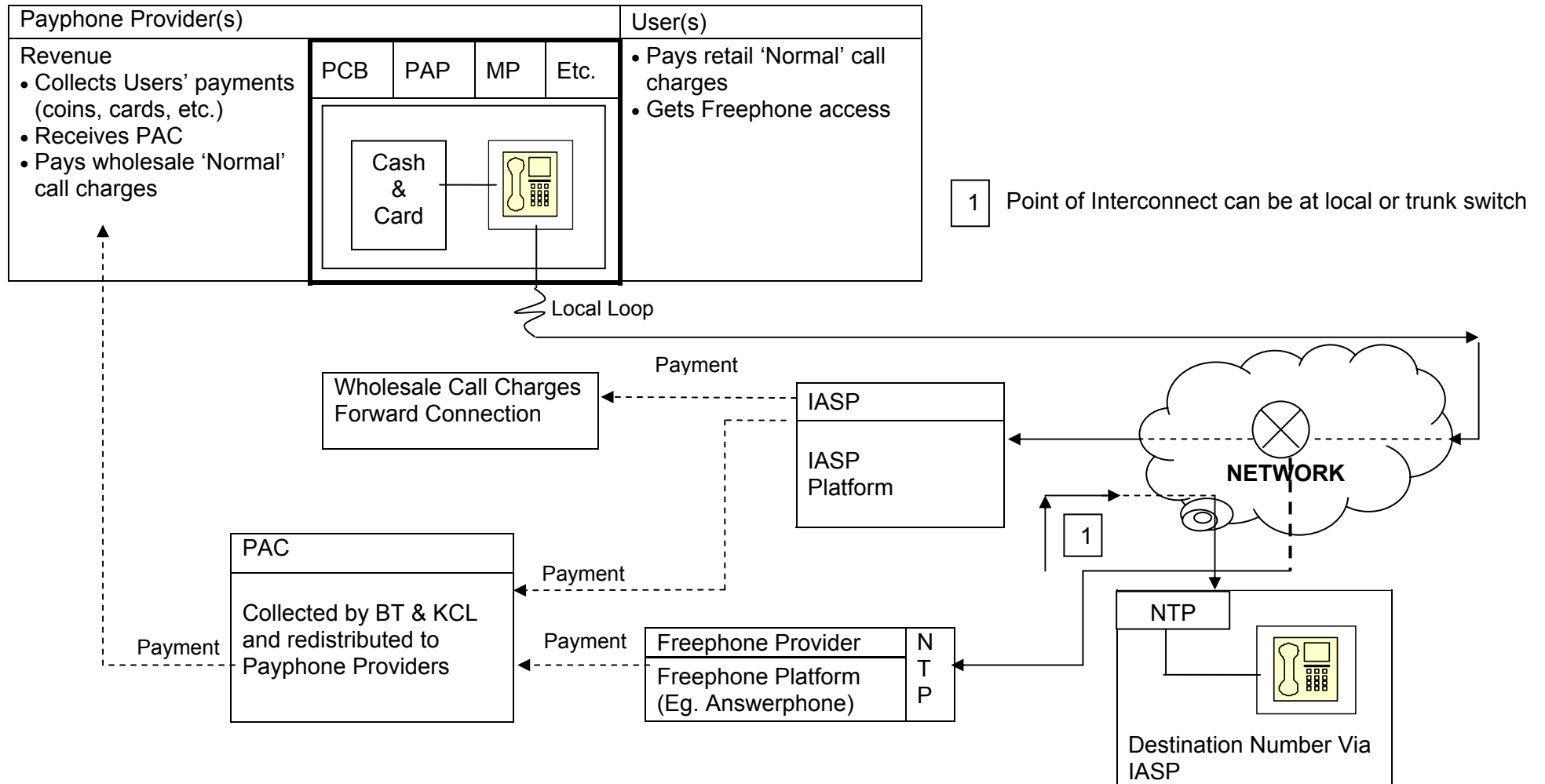
2.8 Whereas Ofcom has no reason to believe that either BT or Kingston would renege on the formal undertakings agreed, Ofcom retains the discretion to impose regulatory obligations in future. For example, it may undertake a market review and if appropriate impose a SMP Condition on BT and/or Kingston. Ofcom may otherwise consider imposing an Access-Related Condition to secure end-to-end connectivity.

Section 3

Policy framework

What is payphone access?

Figure 1: Payphone access



- 3.2 Figure 1 illustrates how payphone access works for all payphones which provide access to:
- freephone numbers in general; and
 - IASP via short codes or freephone numbers.
- 3.3 In general, the payphone user pays the normal retail charge for a call directly to the payphone provider, typically with coins or a card. The difference with payphone access to freephone numbers and IASPs is that all or additional payment is due from the recipient of the call, not the originator, as explained in the following paragraphs.
- 3.4 Where the owner of a freephone number is an end user of a communications network provider, such as BT or Kingston, they pay for received calls so that the callers do not have to pay for calls themselves. Similarly, an IASP also pays the communications network provider but is using the service to facilitate its own business as a communications provider. An IASP may impose a surcharge on calling cards when a freephone number is used to access its platform, providing the customer is so advised.
- 3.5 Additionally the IASP may also have an interconnection agreement which allows it to receive and terminate calls and direct them back into the network to the desired destination number.
- 3.6 Dependent upon the digits dialled, the payphone access service will be routed over the network, either:
- Directly to a terminating freephone platform (e.g. an answerphone, company switchboard, helpline, etc.); or
 - To an IASP as an intermediate destination (either through a freephone or short code prefix), which recognises the dialling tones and routes the call back through the network to the destination number.
- 3.7 Where a payphone is provided by a party other than BT or Kingston, payment for the handling of payphone access services arises:
- Through a payment from the owner of the freephone number to BT and Kingston, which is then redistributed to the payphone provider; or
 - Through a payment from the IASP, similarly arising from ownership of the freephone number or short code, to BT and Kingston which is also then redistributed to the payphone provider.
 - The payments are subject to an administrative handling charge, which is settled through commercial agreement between the parties concerned.

Payphone access charge

- 3.8 The PAC was introduced by Oftel in September 1996 as a method of compensating BT and Kingston for the costs incurred in handling freephone calls from payphones as part of their universal service obligation ("USO"). The PAC is a levy on a pence per minute basis (ppm) charged to owners of

freephone numbers or IASP short codes for calls terminating on those numbers. The current level of the PAC charged by BT is 8.10 ppm. Ofcom understands that BT has calculated the level of the PAC by dividing the sum of all relevant operating and capital costs (including relevant overheads and a reasonable rate of return on attributable assets) by the total call minutes from payphones, consistent with the appropriate methodology determined by Oftel for the PAC in August 1998.

- 3.9 Kingston uses the same methodology to calculate the PAC. Its current charge is higher (9.94 ppm) than the BT charge, which Kingston considers is justifiable because the level of support it has to provide in relation to its USO is comparatively higher. Kingston levies the PAC in relation to all 0500, 0800 and 0808 'free-to-caller' calls made from Kingston public and managed payphones. It does not currently have arrangements in place for the collection and distribution of the PAC to other payphone operators as it has not been requested to provide such services.
- 3.10 While BT and Kingston are currently required to provide access from their payphones to other communications service providers on reasonable request, there is no such requirement on other payphone providers. However, in order to encourage non-USO providers of payphones to provide access to freephone and indirect access services, thereby increasing overall availability to benefit consumers, Oftel extended in principle the availability of the PAC to all public call boxes and qualifying managed payphones in December 2002 (<http://www.ofcom.org.uk/static/archive/oftel/publications/consumer/2002/payp1202.htm>). Oftel's preference, supported by the payphone operators, was to allow commercial operators the discretion whether or not to provide 'free-to-caller' access from their payphones. Where they did so, Oftel's view was that they should be able to benefit from the PAC. As non-USO payphone providers are very unlikely to have a direct relationship with an IASP or FSP, this makes it difficult for them to collect the PAC. Oftel therefore facilitated industry discussions with BT to develop a suitable collection mechanism, which led to a commercial agreement between BT and participating payphone operators, signed in December 2002 (backdated to January 2002). Ofcom has not been involved in the negotiations for a subsequent agreement. However Ofcom recognises the continued importance of the provision of a PAC collection service. BT has undertaken to continue to provide an outsourced collection service and Kingston has undertaken to offer to enter into similar commercial arrangements if reasonably requested to do so.
- 3.11 The PAC itself relates to the provision of compensation for the costs of handling all free-to-caller calls from payphones. There is no distinction between 0800 numbers in general and 0800 numbers used to access indirect access services. The voluntary undertakings provided by BT and Kingston therefore include the provision of access to all free-to-caller services for which they are compensated through the PAC.

Consumer impact

- 3.12 Research undertaken on behalf of Ofcom consistently shows declining frequent use of payphones in the UK. (The most recent survey undertaken by MORI in February 2004 found that only 37% of UK adults claim to use a public call box at least occasionally, a decline of 9% over six months). However it is the more vulnerable consumers that are most reliant on payphones and therefore most

likely to benefit from being able to access cheaper rate phone calls and/or freephone numbers. Around 3% of UK adults do not have a fixed line phone at home because they cannot afford one; this equates to approximately 750,000 households. Those households are typically non-working, lower income, DE social groups.

- 3.13 Research on pre-paid calling cards usage (from fixed lines and payphones), undertaken by BMRB for Ofcom in July 2004 reinforced previous surveys which demonstrate the popularity of access to indirect access services from payphones. It found that users of pre-paid calling cards are significantly more likely to be of Asian or Black origin, without a fixed line phone at home, aged below 45, from households with incomes below £15,000 per annum, and more likely to have at least one mobile in the home. (Mobile operators may charge for calls to 0800 numbers or bar them altogether).
- 3.14 Clearly, access to free-to-caller services from payphones benefits consumers and Ofcom's policy preference would be that these services should continue to be as widely available as possible.

Section 4

Responses to the July consultation

Introduction

- 4.1 Ofcom is required under paragraph 9 (11) of Schedule 18 of the Act to take all necessary steps to decide whether or not to set a condition to replace a provision that has been continued from the former regulatory regime.
- 4.2 In the July consultation Ofcom asked respondents whether they agreed with its proposal to discontinue licence condition 48. If so, Ofcom sought views on the three options it had identified to achieve its desired policy objectives, namely to safeguard access to a full range of 'free-to-caller' services from payphones, whilst ensuring that the costs of provision are borne on a shared basis. The options were:
- (i) To discontinue licence condition 48 and take no further action.
 - (ii) To discontinue licence condition 48 and replace it with voluntary undertakings from BT and Kingston:
 - to continue to provide access from their payphones to IASPs and other 'freephone' services without charge to the caller;
 - to continue commercial arrangements with other payphone providers to collect and distribute the PAC; and
 - to maintain the PAC at a level which is fair, non-discriminatory and reasonably derived from costs.
 - (iii) To impose relevant conditions under the new regime (by undertaking a market review leading to the imposition of SMP Conditions or by imposing Access-Related Conditions).
- 4.3 Ofcom has also taken account of all respondents' views in coming to its final decision.
- 4.4 The responses to the consultation questions, and Ofcom's response to those responses, are set out below.

Question 1: Do you agree with Ofcom's proposal to discontinue Condition 48 as outlined in the draft Notice attached at Annex 4?

- 4.5 BT and Kingston were fully supportive of Ofcom's proposal. BT explained that commercial imperatives provide a strong incentive for BT to provide access from its payphones. Kingston considers informal regulation is both proportionate and appropriate. The primary concern of other payphone providers was the perceived lack of regulatory protection under proposed options one and two, should a dispute arise over the commercial arrangements for the collection and distribution of the PAC. NWP Spectrum ("NWP") would like Ofcom to establish a set of processes and procedures so that it could

intervene swiftly if necessary and has offered to work with Ofcom, BT and other industry players to establish a framework for rapid dispute resolution. Communications Infrastructure Advice (“CIA”), responding on behalf of Euro Payphone Limited (“europayphone”), Interphone Public Networks Limited (“Interphones”), Leisure Link Entertainment Limited (“Leisure Link”) and Premier Managed Payphones (“Premier”), opposed the discontinuation of licence condition 48. It believes that discontinuation would remove the option to refer to Ofcom for a determination under section 185(1) of the Act. CIA would prefer Ofcom to impose an Access-Related Condition. The revenue provided by the PAC is considered essential to ensure that payphone providers continue to provide access from their payphones. CIA believes that the absence of formal regulation may discourage investment in payphone services.

Question 2: Which of the three proposed options do you prefer and why?

Option 1

- 4.6 CIA expressed concern that to take no action other than to discontinue licence condition 48 would result in little or no incentive for the incumbent to offer access and/or to continue with the PAC regime. In turn this might mean that non-incumbent payphone providers would either have to charge for access to freephone numbers or cease to permit access from their payphones.

Option 2

- 4.7 BT and Kingston both support the voluntary option, which they regard as being both appropriate and proportionate, and agree to provide formal undertakings as proposed in the July consultation. Roundel Associates Limited (T/A Silvertel), (“Silvertel”) believes, on balance, that the voluntary option would appear to offer the most benefits in the short term for both the customer and the payphone provider. However it has concerns regarding the PAC collection and distribution arrangements, which it considers are anti-competitive. Silvertel would prefer an industry forum to develop a regulatory approach. NWP would like an indefinite undertaking, or at least an undertaking for a minimum of 20 years, together with a review of the charges levied by BT for collection and distribution of the PAC, which it considers are “excessive”. CIA also raised concerns about the commercial arrangements (which have been subject to re-negotiation during the consultation period).

Option 3

- 4.8 Payphone providers were concerned that should BT or Kingston renege on their commitments, the subsequent delay before a market review could be concluded and remedies imposed would have a detrimental impact on their business. CIA expressed a clear preference for formal regulation.

Question 3: What are your views on the importance of providing access to indirect access service providers from payphones?

- 4.9 Respondents agreed on the importance of ensuring payphone users have access to a wide range of competitive services, which may also be essential services for some consumers, particularly those on low incomes. Payphone providers consider the PAC to be an important revenue stream for their business.

Other issues raised in response to the consultation

- 4.10 Payphone providers expressed concern about BT's lack of transparency regarding the collection and distribution of the PAC, particularly in relation to the administration charge.
- 4.11 Charmaine Morgan, South West Norfolk Labour Party Prospective Parliamentary Candidate, highlighted local community dependency on payphones, irrespective of the increasing use of mobile phones and the high penetration of fixed line telephony. Her particular concern was to ensure that the most vulnerable consumers, e.g. the homeless, have access to a payphone service. Also that freephone services to help lines e.g. the Samaritans, Childline, continue to be available from payphones.

Ofcom's response to consultation responses

Discontinuation of licence condition 48 and the impact on Ofcom's ability to intervene to resolve a dispute regarding administration arrangements

- 4.12 Taking all responses into account, Ofcom considers that option 2 is the most appropriate and proportionate. It has negotiated undertakings with BT and Kingston taking into account the concerns raised by the other payphone providers. As these are public undertakings, Ofcom would not expect BT or Kingston to renege upon them.
- 4.13 Ofcom does not consider that the removal of licence condition 48 changes its position regarding its ability to intervene to resolve a dispute in relation to the administration of the PAC. The removal of licence condition 48 does not affect Ofcom's general dispute resolution powers under section 185 of the Communications Act - were a relevant dispute to arise which fell within the scope of that section, Ofcom would be entitled to exercise its powers in accordance with that section to resolve the dispute.
- 4.14 Ofcom considers that the arrangement for the collection and distribution of the PAC is a matter for commercial agreement between BT and other payphone providers. The formal undertakings agreed by BT and Kingston include arrangements whereby in the event of a dispute BT (and Kingston, should it have such arrangements in place), would:
- Continue to collect and distribute PAC payments on the terms agreed prior to the dispute.
 - Undertake dispute resolution using a process to be agreed by the parties to the dispute.
 - Not withhold agreement unreasonably to refer the dispute to a suitable dispute resolution service.

Ex ante regulation

- 4.16 Ofcom considers that the end to end connectivity principle (see http://www.ofcom.org.uk/static/archive/oftel/publications/eu_directives/2003/end_con0503.htm), which is a part of BT and Kingston's USO, would ensure that payphone users would continue to have access to 'free-to-caller' services from public call boxes without further regulatory intervention. However this option

would not cover BT and Kingston's managed payphones, nor their obligation to maintain the PAC at a cost orientated level.

- 4.17 Ofcom has considered imposing a SMP or Access-Related Condition on BT and Kingston. However Ofcom does not consider it would be proportionate to impose ex ante regulations on BT and Kingston at this point, given that the formal undertakings take account of and address (to the extent that Ofcom considers appropriate) the concerns raised by respondents to the consultation.
- 4.18 Ofcom recognises that failure by one or more of the parties concerned to agree the level of the administration charge may impact on the payphone providers' decision to provide access from their payphones to 'free-to-caller' services. Ofcom considers that, as long as access is guaranteed from payphones under the USO, it is essentially a matter for individual providers to decide whether they wish to offer access to 'free-to-caller' services. Ofcom hopes that they will continue to do so. The undertakings regarding the collection and distribution of the PAC on their behalf should facilitate this arrangement. In any case, Ofcom retains its ability to act against BT or Kingston under the Competition Act 1998 in the event that their actions amount to an abuse of dominance, irrespective of whether or not an ex-ante condition is in place.

Impact on consumers/competition

- 4.20 Should BT or Kingston renege on its commitments and/or should payphone providers be unable to reach a satisfactory commercial arrangement for the collection and distribution of the PAC, it is possible that the latter may choose to bar or charge for calls to 0500, 0800 and 0808 numbers from their payphones. This may impact negatively on consumers and on competition in the payphone market.
- 4.21 Whilst this would be regrettable, Ofcom considers that the decision whether or not to provide access from a non-USO payphone must be a commercial one. In the event that serious consumer detriment should arise, it remains open for Ofcom to consider imposing a General Condition on all payphone providers requiring them to provide 'free-to-caller' access to freephone and indirect access services from their payphones.

Section 5

Conclusions

- 5.1 The analysis presented in Sections 3 and 4 of this document, when read in conjunction with the Regulatory Impact Assessment (RIA) undertaken as part of the July consultation exercise (http://www.ofcom.org.uk/consult/condocs/bt_kingst_ppa/) forms the basis of the conclusions reached and outlined below. Ofcom considers those conclusions are in line with its statutory duties and regulatory principles (http://www.ofcom.org.uk/about_ofcom/how_we_work/reg_prin/):
- 5.2 For example, although the Act does not require Ofcom to consult before discontinuing a Continuation Notice, a formal public consultation has been undertaken, setting out various regulatory options with an assessment of each. In addition, stakeholders' views and the findings of consumer research have been taken into account.
- 5.3 Ofcom considers it is important that indirect access and freephone services continue to be available from payphones. This benefits payphone users by providing them with continued access to a wide range of competitive services. The written undertakings from BT and Kingston should ensure that this will continue.
- 5.4 Ofcom recognises the importance of continuing the PAC regime in order to allow payphone providers to recoup their costs of providing access to 'free-to-caller' services. The PAC allows the costs of providing payphone access to be borne on a shared basis, helping to alleviate the financial demands on the payphone business.
- 5.5 Ofcom also wishes to ensure that commercial arrangements between either BT and/or Kingston with other payphone providers to collect and distribute the PAC should continue if required. BT's formal undertaking provides that it will continue to offer to enter into such arrangements. Kingston would offer an arrangement if required, on reasonable request.
- 5.6 Ofcom believes that in future it should be left to the parties concerned to agree on an effective means of resolving disputes regarding the commercial arrangements for the collection and distribution of the PAC. The formal undertakings provided by BT and Kingston provide an appropriate mechanism for protecting payphone providers in the event of a dispute. Both BT and Kingston have provided undertakings to continue to collect and distribute the PAC on the same terms as prevailed prior to the dispute arising and until such time as the dispute has been resolved to both parties' satisfaction.
- 5.7 The undertaking to maintain the PAC at a fair, non-discriminatory and cost-oriented level should ensure that IASPs and other FSP are not required to compensate payphone providers disproportionately.
- 5.8 Ofcom considers that the voluntary undertakings received from BT and Kingston provide the least intrusive regulatory mechanism to secure its policy objectives as outlined above.

- 5.9 Ofcom is operating with a bias against intervention. Whilst Ofcom retains its discretion to undertake a formal market review of the payphone access market or to impose an Access-Related Condition if appropriate, it does not consider it would be appropriate to do so at the moment given that formal undertakings are in place.
- 5.10 Ofcom retains the ability to act against BT or Kingston under the Competition Act in the event that their actions amount to an abuse of dominance.

Annex 1

List of respondents to Payphone Access Consultation

British Telecommunications plc

Charmaine Morgan, South West Norfolk Labour Party Prospective Candidate

Communications Infrastructure Advice ("CIA") representing Euro Payphone Limited, Interphone Public Networks Limited, Leisure Link Entertainment Limited, and Premier Managed Payphones.

Kingston Communications (Hull) plc

NWP Spectrum

Roundel Associates Ltd, T/A Silvertel

Annex 2

Discontinuation of Licence Condition 48

Notice to British Telecommunications plc under paragraph 9 of schedule 18 to the Communications Act 2003

Notice that certain continued provisions set out in the continuation notice given to British Telecommunications plc on 23 July 2003 will cease to have effect from 10 February 2005

1. Ofcom, in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to British Telecommunications plc ('BT') that Condition 48 contained in Schedule 1 to the continuation notice given to BT on 23 July 2003, which took effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect from 10 February 2005 to the extent set out in Schedule 1 to this notice ('the Discontinued Provision').

2. In giving this notice, Ofcom has, in accordance with Paragraph 9(11) of Schedule 18 to the Act, taken all steps necessary for enabling it to decide whether or not to set a Condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Discontinued Provision and whether or not to exercise its power to set a Condition under that Chapter for that purpose.

3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from 10 February 2005 to the extent that they were given or made for the purposes of the Discontinued Provision.

4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to BT in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.

5. Ofcom issued a consultation as to its proposals to discontinue the Discontinued Provision on 22 July 2004 and requested comments by 2 September 2004. Ofcom has taken into account the comments it received during that consultation.

6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this notice, headings and titles shall be disregarded.

Signed



Gareth Davies
Competition Policy Director
Ofcom

A person authorised under paragraph 18 of the Schedule to the Office of Communications Act 2002

Date 10 February 2005

Schedule 1

The following provisions which were contained in Schedule 1 to the Continuation Notice will cease to have effect from 10 February 2005 to the extent set out below.

Condition 48 in its entirety and in respect of which Ofcom has decided not to set conditions to replace the continued provision.

Notice to Kingston Communications (Hull) plc under paragraph 9 of schedule 18 to the Communications Act 2003

Notice that certain continued provisions set out in the continuation notice given to Kingston Communications (Hull) plc on 23 July 2003 will cease to have effect from 10 February 2005

1. Ofcom, in accordance with Paragraph 9(9) of Schedule 18 to the Communications Act 2003 ('the Act') hereby gives notice to Kingston Communications (Hull) plc ('Kingston') that Condition 48 contained in Schedule 1 to the continuation notice given to Kingston on 23 July 2003, which took effect from 25 July 2003, ('the Continuation Notice'), will cease to have effect from 10 February 2005 to the extent set out in Schedule 1 to this notice ('the Discontinued Provision').
2. In giving this notice, Ofcom has, in accordance with Paragraph 9(11) of Schedule 18 to the Act, taken all steps necessary for enabling it to decide whether or not to set a Condition under Chapter 1 of Part 2 of the Act for the purpose of replacing the Discontinued Provision and whether or not to exercise its power to set a Condition under that Chapter for that purpose.
3. All directions, determinations, consents and other provisions which were continued under the Continuation Notice by virtue of Paragraph 9(8) of Schedule 18 to the Act will also cease to have effect from 10 February 2005 to the extent that they were given or made for the purposes of the Discontinued Provision.
4. To the extent that the Continuation Notice does not cease to have effect under Paragraph 1 of this notice, the Continuation Notice shall continue to have effect until Ofcom has given a further notice to Kingston in accordance with Paragraph 9(9) of Schedule 18 to the Act that it shall cease to have effect.
5. Ofcom issued a consultation as to its proposals to discontinue the Discontinued Provision on 22 July 2004 and requested comments by 2 September 2004. Ofcom has taken into account the comments it received during that consultation.
6. In this notice, except as otherwise provided or unless the context otherwise requires, words or expressions shall have the meaning assigned to them and otherwise any word or expression shall have the same meaning as it has in the Act. For the purposes of interpreting this notice, headings and titles shall be disregarded.

Signed



Gareth Davies
Competition Policy Director
Ofcom
A person authorised under paragraph 18 of the Schedule to the Office of
Communications Act 2002

Date 10 February 2005

Schedule 1

The following provisions which were contained in Schedule 1 to the Continuation Notice will cease to have effect from 10 February 2005 to the extent set out below.

Condition 48 in its entirety and in respect of which Ofcom has decided not to set conditions to replace the continued provision.

Annex 3

Formal undertakings



Rosalind Stevens-Strohmann
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9RA

9th December, 2004

VOLUNTARY UNDERTAKINGS RELATING TO PAYPHONE ACCESS

Dear Rosalind

As part of the ongoing consultation process on discontinuation of BT's Licence Condition 48, with respect to payphone access, BT voluntarily makes the following commitments to Ofcom. The offer of these voluntary undertakings in no way implies that BT has taken any view as to market definition, or market power. These undertakings will be effective from the date on which Ofcom discontinues BT's Licence Condition 48.

Provision of Payphone Access from BT's Payphones

- BT will continue to provide Freephone Service Providers (FSPs) with access from BT's Public and Managed Payphones to their free-to-caller services, provided they have requested such access under the relevant Schedules of the BT Standard Interconnect Agreement³ and provided there remains reasonable demand for the service;
- In this context, payphone access includes the ability to originate calls, via BT's network, from payphones connected directly to BT's access lines, using BT's retail call services. Calls originated from other network operators' access lines, or using IDA or CPS, are not subject to these undertakings;
- For the purpose of these undertakings, an FSP is any service provider (including an IA service provider (IASP)) offering publicly available electronic communications services, using an 0500, 0800 or 0808 number range, or any other number range designated by Ofcom from time to time for use in association with 'no charge to caller' services in the UK's Specified Numbering Scheme, and having the relevant contractual agreements in place with BT either directly, or indirectly via another Public Electronic Communications Network;
- BT will continue to levy Payphone Access Charges (PAC) on FSPs, for calls from BT's Public and Managed Payphones to their free-to-caller services that

³ Or such relevant document as succeeds or replaces the BT Standard Interconnect Agreement, for the relevant purpose.

are both reasonably derived from costs and are not unduly discriminatory. The payphone access service to which the PAC applies will continue to be sufficiently unbundled from other services as to ensure that no unnecessary service or cost component is included;

- The PAC is a charge that covers relevant costs of enabling access from payphones to all free-to-caller services, including freephone services and those behind which Indirect Access Service Providers operate their services;
- BT will continue to publish its PAC charges, along with the associated contractual terms and conditions, in the BT Standard Interconnect Agreement and the Carrier Price List;
- BT will apply a minimum 28-calendar-day notification process for changes to these published charges and terms, unless otherwise agreed between the parties to the contract; and
- Where a dispute arises over charges or other commercial terms, relating to Payphone Access, and this dispute directly triggers a formal market review by Ofcom, BT will treat this market review process as part of the dispute resolution process, for contractual and commercial purposes. Where the dispute is resolved through the outcome of a formal market review, BT will apply the full timeframe both for the dispute resolution and for the market review, when calculating financial settlements, subject to the market review being of reasonable duration.

Outsourced PAC Collection Service

- BT will continue to provide third-party operators of Public and Managed Payphones with an outsourced PAC collection service⁴. This will be available in relation to payphones connected to a BT access line, where the relevant free-to-caller calls are presented to BT as retail calls (i.e. BT is unable to collect the PAC for calls that use IDA or CPS);
- BT will offer its PAC collection service on terms that are not unduly discriminatory and will publish the charges and other terms and conditions for this service. The current charges can be found at Part 6 of Section 36 of the BT Price List; and
- Where a dispute arises over charges or commercial terms for BT's PAC collection service, BT will continue to collect the PAC on behalf of third party payphone operators, using the pre-dispute terms and conditions, pending resolution of the dispute. In relation to the PAC collection service, dispute resolution will, at the request of a party to the dispute, be undertaken using a process to be agreed by the parties to the dispute. BT undertakes not to withhold agreement to a suitable dispute resolution process unreasonably.

⁴ This service is currently called the Payphone Access Levy Collection service and is subject to specific contractual terms and charges.

Definitions

For the purpose of these undertakings, the following definitions will apply:

Term	Definition
BT	British Telecommunications plc. (Registered in England, number 1800000)
CPS	Carrier Preselection
IDA	Indirect Access (call-by-call carrier selection)
Managed Payphone	A payphone where the payphone operator sets the payphone tariff & has a commercial agreement with the landowner, leaseholder or manager of the site, for the sharing of revenue from such payphones
Payphone Access	The ability of an FSP to secure access to its free-to-caller services, using 0500, 0800 and 0808 numbers, or any other numbers from a range designated by Ofcom from time to time for use in association with 'no charge to caller' services from BT's Public and Managed Payphones.
Public Payphone	A payphone that is generally available to the public, where certain services including freephone calls are available.

Should questions arise over clarification or interpretation of these undertakings, I can be contacted as below.

Yours sincerely

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Dear Rosalind

Undertaking by Kingston Communications (Hull) plc in relation to Payphone Access

Following Ofcom's consultation on the requirement on BT and Kingston to provide payphone access, Kingston voluntarily makes the following commitments to Ofcom. The offer of these voluntary undertakings in no way implies that Kingston has taken any view as to market definition, or market power. These undertakings will be effective from the date on which Ofcom discontinues Licence Condition 48. For the avoidance of doubt, these undertakings will apply only in the geographic area in which Kingston has USO obligations and has been deemed to have SMP in certain retail and wholesale markets.

1. Provision of and charges for access from public and managed payphones

Kingston undertakes to provide Freephone Service Providers ("FSPs") with access from Kingston's public and managed payphones to their free-to-caller services, provided a reasonable request has been made to Kingston make such calls available and that the provider has entered into appropriate Interconnect and/or other commercial agreements with Kingston and/or other appropriate transit operators.

In this context payphone access includes the ability to originate calls, via Kingston's network, from payphones connected directly to Kingston's access lines. Calls originated from other network operators' access lines (or using IA or CPS) are not subject to these undertakings.

For the purpose of these undertakings, a FSP is any service provider offering publicly available electronic communications services using an 0500, 0800 or 0808 number range, or any other number range designated by Ofcom from time to time for use in association with 'no charge to caller' services in the UK's specified numbering scheme, and having the relevant contractual agreements in place with Kingston either directly or indirectly via another Public Electronic Communications Network.

Kingston will continue to levy Payphone Access Charges (PAC) on FSPs, for calls from Kingston's Public and Managed Payphones to their free-to-caller services that are both reasonably derived from costs and are not unduly discriminatory. The payphone access service to which the PAC applies will continue to be sufficiently unbundled from other services as to ensure that no unnecessary service or cost component is included.

The PAC is a charge that covers relevant costs of enabling access from payphones to all free-to-caller services, including freephone services and those behind which IASPs operate their services.

Kingston will continue to publish its PAC charges, along with the associated contractual terms and conditions, in the Kingston Narrowband Network Access Price List.

Where a dispute arises over charges or other commercial terms, relating to Payphone Access and this dispute triggers a formal market review by Ofcom, Kingston will treat this market review process as part of the dispute resolution process, for contractual and commercial purposes. Where the dispute is resolved through the outcome of a formal market review, Kingston will apply the full timeframe both for the dispute resolution and for the market review, when calculating financial settlements, subject to the market review being of reasonable duration.

2. Commercial arrangements with other payphone providers for the collection and distribution of the Payphone Access Charge (PAC)

Kingston undertakes, on the reasonable request of any payphone provider who operates public and/or managed payphones at various locations throughout the Hull area, to offer to enter into commercial arrangements with such other payphone providers for the collection and distribution by Kingston on behalf of those other payphone providers of any PAC payments which are due to them. This will be available in relation to payphones connected to a Kingston access line, where the relevant free-to-caller calls are presented to Kingston as retail calls (i.e. Kingston is unable to collect the PAC for calls that use IDA or CPS)

For the avoidance of doubt, such arrangements may allow for Kingston to recover its costs in fulfilling its obligations under the arrangements, as long as those costs are made fully transparent to the other payphone providers.

In the event of a dispute arising regarding any such arrangements, Kingston undertakes to continue to collect the PAC on behalf of third party payphone providers, using the pre-dispute terms and conditions, pending resolution of the dispute. Dispute resolution will, at the request of the party to the dispute, be undertaken using a process to be agreed by the parties to the dispute. Kingston undertakes not to withhold agreement to a suitable dispute resolution process unreasonably.

Yours sincerely

HUW SAUNDERS
Group RA & TD Director

Annex 4

Glossary

Access Code: Short, generally memorable, codes, usually beginning with '1', which allow end users to access a wide range of telephony services.

BT: British Telecommunications plc.

Call Box Services: means the repair and maintenance of public call boxes and the provision of publicly available telephone services from those public call boxes.

Fixed Public Telephone service: means the provision to end users at fixed locations via a number or numbers in the national numbering plan of a service for the originating and receiving of national and international calls, including access to emergency services, the provision of operator assistance, directory services, provision of public payphones, provision of service under special terms or provision of special facilities for customers with disabilities or with special social needs or both such provisions.

Freephone number: means a number that is reached free of charge to the Customer except where a charge is notified to the End-User at the start of the call.

Geographic Number: a number from the national numbering plan where part of its digit structure contains geographic significance used for routing calls to the physical location of the network termination point of the subscriber to whom the number has been assigned.

Indirect Access: where a customer's call is routed and billed through operator A's network even though the call originated from the network of operator B

Indirect Access Code: means a type of Access Code used to provide Indirect Access.

Indirect Access Service Provider (IASP): means a provider of Indirect Access services.

Interconnection: the physical and logical linking of telecommunications networks used by the same or a different organisation in order to allow the users of one organisation to communicate with users of the same or another organisation, or to access services provided by another organisation. Services may be provided by the parties involved or other parties who have access to the network.

Kingston: Kingston Communications (Hull) Plc – communications company which operates in the Hull area.

Network Termination Point (NTP): means the physical point at which a Subscriber is provided with access to a Public Electronic Communications Network and, where it concerns Electronic Communications Networks involving switching or routing, that physical point is identified by means of a specific network address, which may be linked to the Telephone Number or name of a Subscriber

Payphone: a telephone which requires prepayment for calls via coins, calling cards, phonecard, or credit/debit cards.

Payphone access charge (PAC): the charge as specified in the Carrier Price list which the customer, as a qualifying payphone operator, is permitted to levy for freephone calls and which the conveyance operator is entitled under contract to levy from terminating operators participating in the calls.

Public call box: means a public pay telephone which is permanently installed on public land and to which the public has access at all times.