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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Re: ***Ex Parte Submission Concerning Proposed Merger of British Telecommunications plc and MCI Communications Corporation (GN Docket No. 96-245)***

Dear Mr. Caton:

Cognito Limited ("Cognito"), by its attorneys, hereby provides the Commission in duplicate, pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1206 (1997), copies of filings submitted on behalf of Cognito to the Director General of Telecommunications of the United Kingdom ("UK"). These submissions raise issues that relate to the proposed merger between British Telecommunications plc ("BT") and MCI Communications Corporation ("MCI"). Specifically, we enclose two copies of Cognito's *Supplementary Request to the Director General of Telecommunications for (i) A Determination on the Applicability of Condition 13 Pricing to Leased Lines; (ii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Condition 13 Obligations; and (iii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Fair Trading Conditions*. These documents were originally submitted to Oftel on June 6, 1997, by Cognito's UK counsel, Rakisons.

Cognito is a UK national mobile data provider of terminals and services which operates pursuant to a licence granted in 1992 under the UK Telecommunications Act 1984. Cognito is authorized by its licence to run a Relevant Connectable System ("RCS") as defined in Condition 13.9 of BT's licence. Cognito utilizes private circuits leased from BT to send messages between its base stations and switching sites. Cognito asserts that BT has been obligated since 1992 to provide leased lines to Cognito, and to price such circuits at wholesale rates. The enclosed filing documents BT's conduct in refusing for an extended period of time (five years) to provide Cognito inland private circuits on a wholesale basis, which Cognito understands that BT has an

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obligation to provide under Condition 13 of BT's licence. Cognito is concerned that BT has not complied with its license obligations with respect to services to be provided the competitors.

Cognito first sought assistance from Oftel in 1992. However, Cognito also is concerned that Oftel has not been forthcoming with adequate assistance in enforcing BT's interconnection obligations. Although it appears that BT should be providing wholesale prices for national private circuits, BT has used its dominant market position to avoid doing so. Thus, Cognito has been forced to file the enclosed *Supplementary Request* for a determination by Oftel of issues in dispute. Moreover, Oftel has indicated in discussions with Cognito that assuming it makes a formal determination in the proceeding that Cognito was entitled to wholesale prices, Oftel will not be prepared to require that BT make payments retroactive to 1992 to make whole Cognito for its years of overpayments.

Furthermore, as a related matter, Oftel has now concluded that as of October 1997, BT should no longer be obliged to provide national circuits at wholesale pricing because Oftel considers that the UK market for provision of such private circuits is suitably competitive. However, Cognito will in fact be required to purchase such lines from BT since, to Cognito's knowledge, there are no other providers of inland private circuits within the UK providing bandwidth of less than 2 MB.

Cognito submits the enclosed documentation for the consideration of the Commission with respect to the proposed BT / MCI merger. Cognito understands that this matter is of relevance to the referenced docket since it evidences a concern with the enforcement of procompetitive policies in the UK and BT's commitment to the reforms. As indicated, we enclose copies of the *Supplementary Request* to the Director General of Telecommunications filed on Cognito's behalf. Cognito remains ready and available to continue discussions with BT to resolve the issues related to BT's provision of private circuits on a wholesale basis.

Should there be questions concerning this matter, please contact the undersigned.

Very truly yours,

Helen E. Disenhaus
Counsel for Cognito

Attachment

CERTIFICATE OF SERVICE

I, Sheila M. Beattie, hereby certify that on this 18th day of July, 1997, a copy of the foregoing Ex Parte Submission Concerning Proposed Merger of British Telecommunications plc and MCI Communications Corporation (GN Docket No. 96-245) was served, via hand-delivery, upon the following parties:

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Federal Communications Commission
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Washington, D.C. 20554

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Federal Communications Commission
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197548.1

RAKISONS

S O L I C I T O R S

6 June 1997

SUPPLEMENTARY REQUEST TO THE DIRECTOR GENERAL OF TELECOMMUNICATIONS FOR:

(i) A Determination on the Applicability of Condition 13 Pricing to Leased Lines;

(ii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Condition 13 Obligations;

(iii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Fair Trading Conditions;

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SUPPLEMENTARY REQUEST TO THE DIRECTOR GENERAL OF TELECOMMUNICATIONS FOR:

(i) A Determination on the Applicability of Condition 13 Pricing to Leased Lines;

(ii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Condition 13 Obligations;

(iii) An Order Under Section 16 of the Telecommunications Act 1984 Requiring BT to Comply with its Fair Trading Conditions;

All the documents referred to below are included in the paginated Appendix. The highlighted page references are to pages in this Appendix.

1. **Cognito's Licence**

1.1 The Applicant, Cognito Limited ("Cognito"), is a national mobile data operator operating under a licence granted under Section 7 of the Telecommunications Act 1984 ("the Act") granted on 12 October 1992 (the "Licence"). **(Pages 1 to 32)**

1.2 The Licence authorises Cognito to provide telecommunication services consisting in the conveyance by wireless telegraphy of data messages including switching incidental to such conveyance.

1.3 Cognito is authorised by its licence to run a Relevant Connectable System ("RCS") as defined in Condition 13.9 of BT's licence (referred to in section 2 below).

1.4 A licence under Section 7 of the Act was originally granted to Cognito Group Limited ("Cognito Group") on 28 January 1992. On 28 September 1992, the assets of Cognito Group were sold to Cognito and all relevant employees became employees of Cognito. Cognito Group's licence was therefore revoked on 12 October 1992, being the date the Licence was issued to Cognito. Cognito was also granted a licence under the Wireless Telegraphy Act 1949 ("the WTA") on 8 January 1993 following revocation of the WTA licence granted to Cognito Group.

1.5 Cognito is not a public telecommunications operator and so is not prevented under Condition 46 from having the benefit of Condition 13 apply to its private circuits.

2. BT's Licence and Obligations Under Condition 13

2.1 The Secretary of State granted to British Telecommunications on 22 June 1984 a licence ("BT's licence") under Section 7 of the Act for the running of the telecommunication systems specified in Annex A to BT's licence. By virtue of Section 109 of and, paragraph 20 of Schedule 5(2) of the Act, BT's licence takes effect as if granted to British Telecommunications Plc ("BT").

2.2 Several parts of BT's licence are relevant to this request including, but not limited to, the provisions set out below.

2.3 Condition 13.1(a) of BT's licence requires BT to connect and keep connected, to any of its telecommunication systems, or to permit to be so connected and kept connected, the systems of Operators and accordingly to establish and maintain one or more such Points of Connection as are reasonably required and are of sufficient capacity and in sufficient number to enable Messages conveyed or to be conveyed by means of the Operator's system to be conveyed by means of any of the BT systems in such a way as conveniently to meet all reasonable demands for the conveyance of Messages between the Operator's system and any of BT's systems.

2.4 BT is required by Condition 13.1(c) of its licence to provide such other telecommunication services and information and other services as the Director General of Telecommunications ("Director General") determines are reasonably required (but no more than reasonably required) to secure that Points of Connection are established and maintained and to enable the Operator effectively to provide the Connection Services which it provides or proposes to provide.

2.5 Condition 13.1(d) obliges BT to provide any other telecommunications service which is either an initial standard service or a service which the Director General and the licensee agree should be a service for the purposes of this sub-paragraph.

2.6 Condition 13.9 defines Connection Service to mean a telecommunication service consisting in the conveyance of any Message which has been, or is to be, conveyed by means of any of the BT systems.

3 Fair Trading Conditions ("FTCs")

3.1 On 1 October 1996, fair trading conditions were added to BT's licence, taking effect on 31 December 1996. These provide that it is a breach of BT's licence for BT to enter into agreements which have an appreciable adverse effect on competition.

3.2 Furthermore, it is a breach of BT's licence for BT to abuse its dominant position for example, by directly or indirectly imposing unfair purchase or selling terms or other unfair trading conditions.

4 Oftel's Stated Position

4.1 Oftel has publicly stated in its December 1996 Consultative Document that national private circuits as well as IPLCs are subject to Condition 13 pricing. Oftel has however, indicated it is reviewing this situation on an on-going basis.

4.2 Connection Service has been interpreted by the Director General in the IPLC Determinations of 31 January 1997 (the "IPLC Determination") as including services provided by means of switched and non-switched conveyance.

5 Brief Overview of The Issues

5.1 Cognito maintains that BT is, and has been since interconnection was first requested of BT in writing during September 1992, obliged to provide interconnection in accordance with the provisions of Condition 13 and in particular Conditions 13.1(a) and (c). Cognito maintains that as part of BT's obligations under Condition 13, Cognito is entitled to benefit from Condition 13 pricing in relation to all its private circuits leased from BT.

5.2 BT has rejected all prior negotiation requests made by Cognito or Cognito Group in this regard since September 1992 and has failed to enter into an interconnect agreement with Cognito under Condition 13.

5.3 Condition 13.5 of BT's licence provides for either party to apply to the Director General to determine these terms and conditions over which the parties are in dispute for the purposes of an agreement in connection with Condition 13.

5.4 Cognito maintains that certain terms of the retail contract concluded with BT show that the FTCs have been breached by BT as further described in paragraph 11 below.

6 Overview of Cognito's Position at Time of Condition 13 Interconnection Request

6.1 Cognito Group had its BT private circuits disconnected in July 1992 and it is understood that BT was compensated for this. Cognito purchased the assets of Cognito Group on 28 September 1992 and was charged £300,000 by BT to reconnect the lines amortised at a commercial rate of interest over three years.

6.2 David Lawson who had been responsible for BT interconnection negotiations at Cognito Group became an employee of Cognito Limited on 28 September 1992 and continued the interconnect negotiations with BT that he had started while employed by Cognito Group.

6.3 Despite Cognito's repeated requests for urgent reconnection, BT delayed reconnecting these private circuits until mid January 1993, so that Cognito had to wait until February 1993 before being able to generate revenue, issuing its first invoice on 1 February 1993.

7. Cognito's Requests to BT for Condition 13 Interconnection

7.1 A meeting between David Lawson and BT was held on 2 September 1992. At this meeting, BT was requested to provide national private circuits as part of interconnection on Condition 13 terms. Cognito's network has generally consisted of some switched conveyance but mainly of non-switched conveyance.

7.2 It is evident from BT's fax of 3 September 1992 (**Page 32**) that the issue of Condition 13 pricing for private circuits as part of interconnection was discussed and attempted to be negotiated by David Lawson at the meeting of 2 September 1992. The final paragraph of BT's letter of 3 September refers to negotiations on this point and states that BT will report back as soon as they can.

7.3 The first written request to BT for interconnection was made on 3 September 1992 (**Page 33**) in reply to BT's abovementioned fax of the same day. This request also refers to ongoing negotiations with BT as to the request made of it that Condition 13 pricing should apply. BT was also required as part of such request to provide national private circuits as part of BT's Condition 13 interconnection obligations. This written request to BT specified that the Cognito Group system had been designated as a Relevant Connectable System.

7.4 On 8 September 1992 David Lawson wrote to Oftel seeking confirmation that Cognito Group operated a Relevant Connectable System and was thereby entitled to negotiate an interconnection agreement with BT under Condition 13 terms. (**Page 34**)

7.5 On 9 September 1992 Oftel replied and confirmed that Cognito Group was entitled to negotiate an interconnection agreement on such basis with BT. (**Page 35**)

7.6 David Lawson continued his attempts to negotiate with BT during September 1992 to secure the benefit of Condition 13 pricing in relation to private circuits ordered from BT. Despite Oftel's assurance in its abovementioned fax of 9 September 1992 that Cognito Group was so entitled, BT refused to accept its entitlement to Condition 13 interconnection.

7.7 David Lawson wrote to BT again on 22 September 1992 (**Page 36**) repeating the request for interconnection on Condition 13 pricing. He made it clear that he was only accepting the standard retail tariff on protest since BT was refusing to apply Condition 13 pricing. David Lawson reserved the right to continue to raise this issue. On 23 September 1992 (**Page 37**) BT replied to David Lawson stating:

> "When Cognit [sic] can demonstrate their eligibility, and such a contract is negotiated, the relevant tariffing would be applied to any circuits provided under standard terms and conditions."

7.8 Cognito understood these representations to mean that it would receive credit, backdated to the date of first payment by Cognito to BT, for the difference between the Condition 16 retail prices paid to BT and the Condition 13 prices that Cognito maintains BT was obliged to charge. Cognito maintains that BT has mislead it into

believing that as soon as Cognito could show Condition 13 entitlement, then it would be credited for all payments made on Condition 16 terms back-dated to the date of first payment.

7.9 By October 1993 the parties still had not reached agreement as BT continued to mislead Cognito and refuse to apply Condition 13 pricing. In BT's letter to David Lawson of 29 October 1993 (**Page 38**) BT again stated:

> "In the event that Cognito Ltd obtain a change in its operating license and are able to negotiate with BT under different license conditions than Condition 16, Cognito Ltd would not be penalised by migrating to new terms and conditions from any existing contract."

7.10 This was followed by further telephone discussions and BT's letter of 1 November 1993 (**Page 40**) which said:

> "If Oftel were to rule that your existing licence allowed different Terms and Conditions, other than Condition 16, then of course BT would abide by it. Paragraph 3 of my letter 'Interconnect Agreement' would equally apply to any ruling on the interpretation of your existing operating licence."

7.11 None of the letters from or discussions with BT have changed Cognito's understanding that it would be fully compensated for the difference between the Condition 16 retail price charged and the Condition 13 prices that ought to have been charged. Moreover, Cognito has been assured that it would be compensated.

7.12 From December 1993 until April 1996 there were no further developments as Cognito concentrated on turning a loss making business in 1993, 1994 and 1995 into a profitable one.

8. Developments During 1996

8.1 By early 1996, Cognito managed to attain financial and management resources necessary to reopen the Condition 13 pricing issue. Accordingly, Rakisons were instructed and on 2 May 1996 (**Page 41**) wrote to Oftel on a no names basis seeking assurances on the principles of this issue. Following Oftel's response on 16 May (**Page 45**) Rakisons provided further information by letter to Oftel dated 13 June 1996 (**Page 47**). A specific request was made by Rakisons for the two letters of 2 May and 13 June to be treated together as a formal request for a determination.

8.2 Oftel replied on 24 June 1996 (**Page 49**) that it had not seen sufficient evidence of Cognito's request for an interconnection on Condition 13 terms. Oftel added that it had informed BT of the determination request and that it was seeking further information from BT. Since the IPLC Determination was also expected shortly Oftel suggested that Cognito await its publication. It was felt that the IPLC Determination would strengthen Cognito's case and could be used as supporting evidence to further submissions Cognito would make thereafter.

8.3 In view of a suggestion by Oftel that Cognito write to BT UK Carrier Services, on 30 October 1996 (**Page 50**), Rakisons did so requesting that all existing and future private circuits ordered by Cognito be provided on a Condition 13 pricing basis. Rakisons suggested that a meeting be set up to discuss this further.

8.4 On 6 November (**Page 54**), Rakisons wrote to BT UK Carrier Services attaching Cognito's fax of 8 September 1992 and Oftel's response of 9 September.

8.5 Oftel also suggested that evidence of the ordering of a specific circuit be shown. Accordingly, on 11 November 1996, Cognito wrote to Barbara Bourne at BT Chester requesting that additional exchange lines be provided to Cognito and on 12 November 1996 (**Page 55(b)**) Rakisons wrote to Barbara Bourne requesting information that the exchange lines that Cognito requested in its fax of 11 November be provided on a Condition 13 basis.

8.6 On 14 November 1996 (**Page 57**), BT Group Legal Services replied that private circuits were not provided on Condition 13 pricing terms. BT's letter added that the meeting suggested in the abovementioned Rakisons' letter of 30 October should be between BT Legal Services and Rakisons.

8.7 On 28 November 1996, a meeting took place between Cognito and BT's Carrier Service Team at which Rakisons and a representative of BT's Legal Service were present. The agenda for the meeting is at **Page 60**.

8.8 No progress was made at the meeting as Mr Cloonan of BT's Legal Services continued to refuse to accept, much less discuss, any argument for private circuits to be provided as part of Condition 13 interconnection. Mr Cloonan also ensured that the representatives of BT UK Carrier Services present at the meeting did not discuss the provision of private circuits as part of interconnection.

8.9 The meeting on 28 November 1996 took place before the IPLC Determination was made and before publication of the December 1996 Consultative Document. Accordingly, following publication of these documents, Rakisons wrote to BT on 3 April 1997 seeking BT's response to this significant change of circumstances. (**Page 65**) BT replied on 14 April 1997 and still refused to change its views (**Page 67**).

9 Effect on Cognito's Business

9.1 Cognito's expenditure with BT to date has amounted to £2.1 million, excluding the latest invoice, and represents far and away Cognito's largest overhead and expense.

9.2 To Cognito's knowledge, there is no other provider of inland private circuits within the UK that is prepared to provide Cognito with private circuits of less than 2 MB capacity. Cognito's bandwidth requirements are a fraction of this capacity and so BT is the only supplier in this market with a sufficiently developed and geographically diverse infrastructure to support Cognito's operations and is likely to remain so for some years.

9.3 The burden of being forced to pay retail terms has significantly impaired the ability of Cognito (which only started operations in 1992) to invest in more advanced mobile data terminals and data services. Cognito was a start up company in 1992 and made losses of £2.2 million in the financial year of 1993, losses of £2.43 million in the financial year of 1994 and losses of £2.02 million in the financial year of 1995.

10 Cognito's Position on the Issues Under Condition 13

10.1 Cognito has reasonably required BT to enter into an agreement under Condition 13.1 to establish and maintain Points of Connection reasonably required to enable Messages to be conveyed by Cognito's RCS and the BT Systems and to provide the private national circuits requested to enable Cognito to effectively provide the Connection Services which it provides or proposes to provide.

10.2 The Points of Connection are necessary to enable Cognito to provide Connection Services since every message to be sent by means of the Cognito system may pass across a Point of Connection. Private national circuits requested of BT are reasonably required because Cognito cannot provide a Connection Service without them.

10.3 As BT has failed to enter into an interconnection agreement applying Condition 13 pricing to national circuits as required by Cognito under Condition 13.1 after a reasonable time of negotiating, it has become necessary for Cognito to supplement its request under Condition 13.5 that the Director General make a determination as to these issues.

10.4 Cognito maintains that Oftel and the Director General have made it clear that Condition 13 applies to inland private circuits.

10.5 Condition 13.9 applies equally to switched and non-switched conveyance.

10.6 Condition 13 pricing applies to all the private circuits supplied by BT to Cognito as well as the switched circuits backing up Cognito's network and the circuits interconnecting BT's and Cognito's networks by means of the Points of Connection.

10.7 Cognito maintains that none of the limitations and exceptions to BT's obligations set out in Condition 13 are applicable so as to limit or exclude BT's obligations under Condition 13.

10.8 The date from which Cognito is entitled to the benefit by Condition 13 pricing is September 1992.

10.9 To the extent that charges calculated under Condition 13 are less than those paid under the Condition 16 based agreement between the parties, the amount of any difference paid by Cognito together with interest calculated as specified under Condition 13.5.A.3.B(6) of BT's licence should be paid to Cognito.

11 Cognito's Position on the Issues under FTCs

11.1 As part of BT's standard retail terms, where a BT private circuit fails, Cognito is obliged to pay the retail rates for the PSTN dial-up invoked in such circumstances. Cognito receives no reduction on the line rental to compensate it for these extra charges over and above the retail leasing rental rates for the private lines. Cognito submits that this amounts to the imposition of unfair trading conditions by a dominant operator.

11.2 Cognito also maintains that BT's continued refusal to provide private circuits to Cognito on Condition 13 terms also amounts to breach of the FTCs added to BT's licence on 1 October 1996 that became effective on 31 December 1996. More particularly such conduct amounts to an abuse of BT's dominant position in the supply of inland private circuits by directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions.

11.3 Cognito trusts that the FTCs can be applied so as to give it effective redress. Such conduct will demonstrate both nationally and internationally that there is an effective regulatory scheme in the United Kingdom and that effective competition opportunities are available to BT's competitors.

12 Issues for Determination and Orders to be Granted by the Director General

12.1 Cognito requests a Determination from the Director General stating that:

12.1.1 Cognito is entitled from September 1992, to private circuits on a Condition 13 pricing basis as part of interconnection with BT, applying to all existing and future inland private circuits that Cognito orders from BT;

12.1.2 Condition 13 pricing applies to all Cognito's existing private circuits leased from BT;

12.1.3 BT repays to Cognito the amount of any difference between the Condition 16 retail price charged and the Condition 13 prices that ought to have been charged;

12.1.4 BT is in breach of the FTCs.

12.2 In view of the continued significant losses being incurred by Cognito as a result of BT's refusal to agree Condition 13 pricing for the private circuits, Cognito requests the Director General to make a Provisional Order under section 16 of the Telecommunications Act requiring BT to:

12.2.1 apply Condition 13 pricing to all inland private circuits currently leased by Cognito from BT and requiring BT to charge such prices as from the date of Cognito's request in September 1992;

12.2.2 make an interim payment to Cognito;

12.2.3 take such action as is necessary to remedy BT's breaches of the FTCs and requiring BT to grant credit to Cognito in respect of charges claimed by BT that were in breach of the FTCs.

Appendix of Documents Supporting Cognito's Supplementary Request to the Director General of Telecommunications

Dated 6 June 1997

LICENCE GRANTED UNDER SECTION 7 OF THE TELECOMMUNICATIONS ACT 1984 TO COGNITO LIMITED FOR THE RUNNING OF TELECOMMUNICATION SYSTEMS FOR THE PROVISION OF RADIO DATA SERVICES

TABLE OF CONTENTS

THE LICENCE

SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT

1 REQUIREMENT TO PROVIDE SERVICES

2 REQUIREMENTS UNDER THE WIRELESS TELEGRAPHY ACT 1949

3 ESSENTIAL INTERFACES

4 COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS

5 PRIVACY

6 METERING

7 PROHIBITION ON UNDUE PREFERENCE AND UNDUE DISCRIMINATION

8 PREPARATION OF ACCOUNTS

9 PAYMENT OF FEES

10 NOTIFICATION OF CHANGES IN SHAREHOLDINGS

11 INTELLECTUAL PROPERTY

12 REQUIREMENT TO FURNISH INFORMATION TO THE DIRECTOR

13 EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1

SCHEDULE 2: REVOCATION

SCHEDULE 3: AUTHORISATION TO CONNECT OTHER TELECOMMUNICATION SYSTEMS AND APPARATUS TO THE APPLICABLE SYSTEMS AND TO PROVIDE TELECOMMUNICATION SERVICES BY MEANS OF THE APPLICABLE SYSTEMS

ANNEX A: THE APPLICABLE SYSTEMS

LICENCE GRANTED UNDER SECTION 7 OF THE TELECOMMUNICATIONS ACT 1984 TO COGNITO LIMITED TO RUN TELECOMMUNICATION SYSTEMS FOR THE PROVISION OF RADIO DATA SERVICES

The Licence

1. The Secretary of State, in exercise of the powers conferred on him by section 7 of the Telecommunications Act 1984 ("the Act") and having consulted the Director General of Telecommunications ("the Director") hereby grants to Cognito Limited ("the Licensee") a Licence, for the period specified in paragraph 2, subject to the Conditions set out in Schedule 1 and to revocation as provided for in Schedule 2, to run the telecommunication systems specified in Annex A ("the Applicable Systems") and authorises the Licensee to do all or any of the acts specified in Schedule 3.

2. This Licence shall enter into force on the day on which it is granted and shall be of 25 years duration.

3. In this Licence:

"Apparatus" means telecommunication apparatus within the extended definition in Schedule 2 of the Act;

"Appeal" includes further appeal and application for leave to appeal or further to appeal;

"Appeal Period" means

(a) where the Licensee appeals against neither conviction nor sentence, the period within which such an Appeal might have been brought; or

(b) where the Licensee appeals against conviction or sentence or both, the period ending on the date on which such an Appeal is finally disposed of;

"Data Message" means a Message which is conveyed in a digital form and which does not consist in live speech;

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

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

"Subsidiary" has the same meaning as in section 736 of the Companies Act 1985 as substituted by section 144(1) of the Companies Act 1989;

"United Kingdom" includes any area to which the provisions of the Act apply by virtue of section 107 of the Act;

"Wireless Telegraphy", "Station for Wireless Telegraphy" and "Wireless Telegraphy Apparatus" have the same meaning as in the Wireless Telegraphy Act 1949.

4. For the purposes of the Schedules and Annex to this Licence, the "Applicable Systems" shall be taken to mean Applicable Systems that are run by the Licensee under this Licence unless the context otherwise requires.

5. The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it were an Act of Parliament. Any word or expression used in this Licence shall unless the context otherwise requires have the same meaning as it has in the Act. For the purpose of interpreting this Licence headings and titles shall be disregarded.

N Davidson

N C DAVIDSON
Department of Trade and Industry

12 October 1992

SCHEDULE 1: CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT

Condition 1

REQUIREMENT TO PROVIDE SERVICES

1.1 The Licensee shall provide or offer to provide by means of the Applicable Systems the telecommunication services described in paragraph 3 of Schedule 3 to this Licence, as follows:

(i) on and following the day 30 months from the day on which the Licence was granted over an area where 40% or more of the United Kingdom population live; and

(ii) on and following the day 60 months from the day on which the Licence was granted over an area where 80% or more of the United Kingdom population live; and

1.2 The Licensee shall satisfy all reasonable demands for the provision of those services referred to in paragraph 1.1 above on and following the days when by that paragraph those services must be provided or offered to be provided by the Licensee.

REQUIREMENTS UNDER THE WIRELESS TELEGRAPHY ACT 1949

2.1 The Licensee shall ensure that there is in force in respect of the establishment and use of each Station for Wireless Telegraphy and the installation and use of each item of Wireless Telegraphy Apparatus comprised in the Applicable Systems a licence granted under Section 1 of the Wireless Telegraphy Act 1949, unless that Station or Apparatus has been exempted from the need for such a licence by regulations made under that section.

ESSENTIAL INTERFACES

3.1 Where the Licensee implements in its Applicable Systems an interface which the Director has specified as an "Essential Interface", it shall secure that that interface conforms with the relevant European Telecommunications Standard or recommendation of the International Telecommunications Union or, in the absence or inadequacy of either, with such other standard, recommendation or document (including requirements or recommendations of the Director or any other person) as the Director may determine for the purpose of this Condition.

3.2 For the purposes of this Condition;

"Essential Interface" means in respect of a point of connection an interface on which in the opinion of the Director it is essential that interoperability between the Applicable Systems and the respective Operator's systems is available; and

"Operator" means any person who is authorised to run a telecommunication system under a Licence which authorises connection of that system to the Applicable Systems.

COMPLIANCE WITH EUROPEAN COMMUNITY REQUIREMENTS

4.1 The Director may from time to time specify requirements relating to the specification, functioning or use of the Applicable Systems which the Secretary of State has notified to the Director are necessary to fulfil any European Community obligation of the United Kingdom, and the Licensee shall comply with any such requirement so specified.

4.2 Any requirement specified under paragraph 4.1 above shall be notified to the Licensee by the Director and described in a list kept by the Director and made available by him for inspection by the general public.

PRIVACY

5.1 Subject to the other Conditions of this Schedule of this Licence, the Licensee shall take all reasonable steps to safeguard the privacy and confidentiality of Messages conveyed for a consideration by means of the Applicable Systems and of information acquired by it in connection with such Messages.

METERING

6.1 The Licensee shall take all reasonable steps to ensure the accuracy and reliability of any Meter used in connection with the Applicable Systems and shall, in relation to any Meter, keep such records as the Director has specified and notified to the Licensee.

6.2 In this Condition, "Meter" means any means for recording the use made of the Applicable Systems by a customer of the Licensee and the production of the corresponding charges or bills for that customer.