



Broadcasting Act 1990

1990 CHAPTER 42

PART X

MISCELLANEOUS AND GENERAL

Matters relating to telecommunication systems

189 Sharing of apparatus by operators of telecommunication systems

(1) Where—

- (a) the telecommunications code contained in Schedule 2 to the 1984 Act expressly or impliedly imposes any limitation on the use to which any telecommunication apparatus installed by a person (“the operator”) may be put, and
- (b) the operator is a party to a relevant agreement,

that limitation shall not have effect so as to preclude the doing of anything which is done in relation to that apparatus in pursuance of that agreement; and anything which is so done shall be disregarded in determining, for the purposes of the telecommunications code as it applies in relation to the operator, the purposes for which that apparatus is used.

(2) In this section “relevant agreement”, in relation to any telecommunication apparatus, means an agreement in writing—

- (a) to which the parties are either—
 - (i) two or more persons to whom this section applies, or
 - (ii) one or more persons to whom this section applies and one or more telecommunications operators who are not such persons; and
- (b) which relates to the sharing by those persons of the use of that apparatus.

(3) Subsection (1) shall not be construed, in relation to a person who is authorised by a relevant agreement to share the use of any apparatus installed by another party to the agreement, as affecting any requirement on him (whether imposed by any statutory provision or otherwise) to obtain any consent or permission in connection with the

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installation by him of any apparatus, or the doing by him of any other thing, in pursuance of the agreement.

(4) This section applies to—

- (a) the holder of a licence to provide a local delivery service within the meaning of Part II of this Act;
- (b) the holder of any licence to provide a prescribed diffusion service continued in force by, or granted under, Part II of Schedule 12 to this Act;
- (c) a telecommunications operator in his capacity as a person providing the means of delivery for the service provided under his licence by a person falling within paragraph (a) or (b) above; and
- (d) the company nominated for the purposes of section 127(1).

(5) In this section—

“the 1984 Act” means the Telecommunications Act 1984;

“statutory provision” means any provision of an enactment or of an instrument having effect under an enactment;

“telecommunication apparatus” has the same meaning as in Schedule 2 to the 1984 Act;

“telecommunications operator” means a person who runs a telecommunication system the running of which is, or is not required to be, licensed under Part II of the 1984 Act.