

SCHEDULE 1

CONDITIONS INCLUDED UNDER SECTION 7 OF THE ACT

Condition 64

PART I:

EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1

EXCEPTIONS AND LIMITATIONS ON OBLIGATIONS IN SCHEDULE 1

64.1 Unless the context otherwise requires and subject to paragraph 64.10, the Licensee's obligations have effect subject to the following exceptions and limitations.

64.2 The Licensee is not obliged to do anything which is not practicable.

64.3 The Licensee shall not be held to have failed to comply with an obligation imposed upon it by or under these Conditions if and to the extent that the Licensee is prevented from complying with that obligation by any physical, topographical or other natural obstacle, by the malfunction or failure of any apparatus or equipment owing to circumstances beyond the control of the Licensee, by the act of any national authority, local authority or international organisation or as the result of fire, flood, explosion, accident, emergency, riot or war.

64.4 Subject to paragraph 64.10, the obligation to provide any service under Part A of this Licence shall not apply:

- (a) where there is no reasonable demand for it;
- (b) where the provision of the service requested would expose any person engaged in its provision to undue risk to health or safety;
- (c) where the Licensee is unable to obtain (either because it has not been developed or for some other reason beyond the Licensee's control) anything necessary to provide a service of the quality or standard required by the person who requests the provision of the service and, in the event of dispute, the Director's decision as to whether anything is necessary shall be final;
- (d) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in which the apparatus necessary to provide that service in that area has not been installed (or in which the installation of such apparatus has not been completed) or as the case may be such apparatus has not been adapted or modified to make it capable of providing the service of the kind requested or the trained manpower necessary to provide the service is not available in that area, provided that in every case where the Licensee declines to provide a service to which this sub-paragraph relates it shall have published, or furnished to the Director, or within 28 days (or such longer period as the Director considers reasonable) following receipt by it of the request that service be provided shall have furnished to the Director, proposals for:
 - (i) progressively installing or completing the installation or the adaptation or the modification of such apparatus; or
 - (ii) the allocation of the trained manpower,necessary for the provision of that service in that area and the Director has not determined that those proposals are unreasonable or are not being effectively carried out; or
- (e) where the Licensee notifies the Director that it is not reasonably practicable in all the circumstances for the Licensee to provide the service requested at the time or place demanded and the Director agrees.

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64.5 The obligation to provide any telecommunication service other than a service to which paragraph 64.4 applies shall not apply:

- (a) where any of the circumstances described in paragraph 64.4 apply;
- (b) where the person to whom the Licensee would otherwise be under an obligation to provide any service requests a service at a place in an area in which the demand or the prospective demand for the service is not sufficient, having regard to the revenue likely to be earned from the provision of the service in that area, to meet all the costs reasonably to be incurred by the Licensee in providing the service, including:
 - (i) the cost of apparatus necessary for the provision of the service there;
 - (ii) the cost of installing, maintaining and operating such apparatus for the purpose of providing the service there; and
 - (iii) the cost of the trained manpower necessary to provide the service there; or
- (c) where the Licensee notifies the Director that it is not reasonably practicable in all the circumstances for the Licensee to provide the service requested at the time or place demanded and the Director agrees.

64.6 The Licensee shall not be obliged to connect, or to keep connected to the Applicable Systems, or to permit to be so connected or kept connected any telecommunication system or telecommunication apparatus or to provide any telecommunication services or to permit the provision of any service if the person to or for whom that is done or is to be done:

- (a) has not entered or will not enter into a contract for the purpose with the Licensee for reasons other than the unreasonable refusal of the Licensee to agree terms for the purpose but this paragraph does not apply in a case where the Director is satisfied that:
 - (i) the Licensee has not published standard terms and conditions which it proposes to apply for the purpose in question, or the transaction is not fit to be governed by such terms and conditions; and
 - (ii) the Licensee has unreasonably refused to agree terms and conditions for this purpose;
- (b) is, or in the Director's opinion has given reasonable cause to believe that he may become:
 - (i) in breach of a contract with the Licensee for the provision of telecommunication services by the Licensee; or
 - (ii) in default in regard to any debt or liability owed to the Licensee in respect of any such contract;
- (c) is using, or permitting the use of, apparatus so connected for any illegal purpose or has done so in the past and is likely to do so again; or
- (d) has obtained, or attempted to obtain any telecommunication service from the Licensee by corrupt, dishonest or illegal means at any time.

64.7 Nothing in these Conditions shall prevent the Licensee from withdrawing from, or declining to provide to, any person any telecommunication service which the Licensee has notified the Director that it is providing in a limited area, or to a limited class of customers, for the purpose of evaluating the technical feasibility of, or the commercial prospects for, that service.

64.8 Nothing in these Conditions shall require the Licensee to provide any telecommunication service, or to provide any telecommunication service of any particular class or description, if it provides instead a service, or a service of a class or description, which satisfies the purposes of that requirement at least to the same extent.

64.9 This Condition shall apply without prejudice to any limitation or qualification of the requirements imposed by or under any other Condition.

64.10 This Condition does not apply to:

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Condition 2.1, 2.2, 2.3, 2.4, 2.5, 2.6 and 2.7 (Directory Services);
Condition 4 (Access to Emergency Call Services and Operator Assistance);
Condition 7.1 (Publication of Charges, Terms and Conditions);
Condition 8 (Prohibition on Undue Preference and Undue Discrimination);
Condition 9 (Requirement to provide Connection Services);
Condition 10 (Requirement to offer contracts for Telephone Services);
Condition 11.1 (Metering Arrangements);
Condition 13 (Itemised Bills);
Condition 14 (Non-payment of Bills);
Condition 15 (Publication of Interfaces), but only so far as it relates to interfaces identified in Annex II part 1 of the Revised Voice Telephony Directive;
Condition 20 (Essential Requirements and Essential Public Interests);
Condition 21 (Standards for ISDN Network Termination Points);
Condition 28.7 (Number Portability);
Condition 29 (Obligation to Supply Numbering Information on Request);
Condition 30 (Accounting Separation for Special or Exclusive Rights in Non-Telecommunication sectors);
Condition 31 (Fair Trading);
Condition 32 (Conciliation and Resolution of Disputes);
Condition 33.4 and 33.5 (Requirement to Furnish Information to the Director);
Part A (Universal Service Conditions), except Conditions 41 (Schemes for Users with special social needs) and 42 (Provision of Public Call Box Services);
Part C (Operators with Significant Market Power for the purposes of the Interconnection Directive);
Part D (Operators with Significant Market Power for the purposes of the Revised Voice Telephony Directive and Operators which have been running a Fixed Public Telephone System for more than 18 months);
Part E (Leased Lines Directive Conditions); or
Part G (in relation to Part A, C, D, and E services).

64.11 Only paragraphs 64.1, 64.2, 64.3 and 64.9 apply to:

Condition 7.2; Condition 7.5(a) and 7.5(b) (Publication of Charges, Terms and Conditions);
Condition 11.2 and 11.3 (Metering Arrangements);
Condition 25 (Supply and Connection of Apparatus for Disabled People);
Condition 33.1, 33.2 and 33.3 (Requirement to Furnish Information to the Director);
Condition 35 (Licensee's Group); and
Condition 36 (Payment of fees).

64.12 Only paragraphs 64.1, 64.6(a) and 64.9 apply to Condition 19.2 (Consultation with Emergency Organisations and Provision of Services to Emergency Organisations).

64.13 Only paragraphs 64.1, 64.2, 64.3, 64.6 and 64.9 apply to Condition 26 (Numbering Arrangements).

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64.14 Only paragraphs 64.1, 64.2, 64.3, 64.5(b) and 64.9 apply to Condition 24 (Public Call Box Services).

64.15 Only paragraphs 64.1, 64.2, 64.3, 64.5, 64.7 and 64.9 apply to Condition 19.1 (Consultation with Emergency Organisations and Provision of Services to Emergency Organisations).

64.16 Paragraph 64.2 does not apply to Condition 62 (Accounting Separation for International Business) or Condition 63 (Maintenance of Effective Competition).

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Changes and effects yet to be applied to :

- [Regulations revoked by 2003 c. 21 Sch. 19\(2\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- [Sch. 1 Pt. 2 Part 0C words substituted by S.I. 1999/3448 reg. 4\(2\)](#)
- [Sch. 6 Pt. 3A heading substituted by S.I. 2000/1713 reg. 2\(1\)\(a\)\(iii\)](#)
- [Annex A incorporated \(with modifications\) by S.I. 1999/2453 reg. 3\(g\)Sch. 3](#)