
STATUTORY INSTRUMENTS

1999 No. 2455

TELECOMMUNICATIONS

**The Telecommunications (Licence Modification)
(Kingston Communications (Hull) PLC) Regulations 1999**

<i>Made</i>	- - - -	<i>3rd September 1999</i>
<i>Laid before Parliament</i>		<i>6th September 1999</i>
<i>Coming into force</i>	- -	<i>27th September 1999</i>

The Secretary of State, being a Minister designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in respect of measures relating to telecommunications, in the exercise of the powers conferred on him by that section, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Telecommunications (Licence Modification) (Kingston Communications (Hull) PLC) Regulations 1999 and shall come into force on 27th September 1999.

Interpretation

2. In these Regulations—

“the 1984 Act” means the Telecommunications Act 1984(3);

“Kingston” means Kingston Communications (Hull) PLC;

“the Kingston licence” means the licence granted by the Secretary of State under section 7 of the 1984 Act to Kingston on 30 November 1987 to run the telecommunication systems referred to in Annex A thereof;

“the former licence” means the Kingston licence in the form it was in immediately before the coming into force of these Regulations;

“the modified licence” means the Kingston licence as amended by these Regulations; and

“the standard Schedules” means the Schedules to the Telecommunications (Licence Modification)(Standard Schedules) Regulations 1999(4).

(1) S.I.1996/266.

(2) 1972 c. 68.

(3) 1984 c. 12, as amended by the Telecommunications (Licensing) Regulations 1997 (S.I. 1997/2930). There are other amendments to 1984 c. 12 which are not relevant to these Regulations.

(4) S.I. 1999/2450.

Modification of the Kingston licence

3. The Kingston licence shall be amended as follows:—

- (a) for the Table of Contents there shall be substituted the Table of Contents set out in Schedule 1 hereto;
- (b) For paragraphs 1 to 3 there shall be substituted the following paragraphs—

“1. The Secretary of State, in exercise of the powers conferred on him by section 7 of the Telecommunications Act 1984 (hereinafter referred to as “the Act”) and after consulting the Director hereby grants to Kingston Communications (Hull) Plc (hereinafter referred to as “the Licensee”) a licence for the period specified in paragraph 3, subject to the Conditions set out in Schedule 1 and to revocation as provided for in paragraph 3 and in Schedule 2, to run telecommunication systems specified in Annex A within the Licensed Area (“the Applicable Systems”) and authorises the Licensee to do all or any of the acts specified in Schedule 3.

2. The Telecommunications Code contained in Schedule 2 to the Act shall apply to the Licensee for all purposes except those not relating to the Applicable Systems and subject to the other exceptions and conditions set out in Schedule 4 for so long as the Licence granted to it is one to which section 8 of the Act applies.

Duration

3. This Licence shall enter into force on 1st January 1988 and shall continue in force until 24th June 2009 in the first instance but, without prejudice to Schedule 2 to this Licence, shall be subject to revocation thereafter on ten years' notice in writing of such revocation and such notice shall accordingly not be given before 25th June 1999.

Interpretation

4. The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it were an Act of Parliament. In this Licence, except as hereinafter 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 purpose of interpreting this Licence, headings and titles shall be disregarded.

5. In this Licence, “Licence” means a licence granted or having effect as if granted under section 7 of the Act and the “Licensed Area” means the area outlined in red on the map attached at Annex B to this Licence.

6. For the purposes of this Licence the “Applicable Systems” means any or all of the telecommunication systems run by the Licensee under this Licence unless the context otherwise requires.

7. Where this Licence provides for any power of the Secretary of State or the Director to give any direction, notice or consent or for the Director to make any specification, designation or determination, it implies, unless a contrary intention appears, a power exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or give or make again any such direction, notice, consent, specification, designation or determination; and any reference however expressed to the Director making any determination or giving any direction or consent about any matter shall be construed as making such determination or giving such direction or consent after consultation with the Licensee and where appropriate with any other person who may have a relevant interest in the matter to which the determination, direction or consent relates.

8. Any notification which is required to be given under this Licence by the Secretary of State or the Director shall be satisfied by serving the document by post on the Licensee at the Licensee's registered office.”;
- (c) for Schedule 1 there shall be substituted Schedule 1 of the standard Schedules, subject to the amendments set out in Schedule 2 hereto;
 - (d) for Schedule 2 there shall be substituted Schedule 2 of the standard Schedules;
 - (e) for Schedule 3 there shall be substituted Schedule 3 of the standard Schedules;
 - (f) for Schedule 4 there shall be substituted Schedule 4 of the standard Schedules; and
 - (g) for Annex A there shall be substituted Annex A as set out in Schedule 3 hereto.

Transitional provisions

4.—(1) So far as anything done or treated as done under or for the purposes of any provision of the former licence could have been done under or for the purposes of the corresponding provision of the modified licence, it shall have effect as if done under or for the purposes of the corresponding provision; and any direction, notice, consent, specification, designation or determination or other decision made or having effect under any provision of the former licence shall be treated for all purposes as made and having effect under the corresponding provision.

(2) Where any period of time specified in a provision of the former licence is current immediately before the coming into force of these Regulations, the corresponding provision of the modified licence shall have effect as if that period of time—

- (a) ran from the date or event from which it was running immediately before the coming into force of these Regulations, and
- (b) expired whenever it would have expired if the former licence had not been modified;

and any rights, liabilities, obligations or requirements dependent on the beginning, duration or end of such a period as mentioned above shall be under the modified licence as they were or would have been under the former licence.

Patricia Hewitt,
Minister of State for Small Business and E
Commerce,
Department of Trade and Industry

3rd September 1999

SCHEDULE 1

Regulation 3(a)

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ANNEX A — THE APPLICABLE SYSTEMS”

SCHEDULE 2

Regulation 3(c)

Amendments to Schedule 1 of the standard Schedules

1. In paragraph 1 of Part 1 after the definition of “Value Added Service” there shall be inserted the following—

“ADDITIONAL DEFINITIONS RELATING TO SCHEDULE 1 TO THIS LICENCE

“Apparatus Supply Business” means the following activities of the Licensee or of any wholly owned Subsidiary taken together:

- (i) the supply of any telecommunication apparatus neither comprised nor to be comprised in any of the Applicable Systems; and
- (ii) the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of any telecommunication apparatus where those activities are not part of the Systems Business nor part of the Supplemental Services Business;

“Fault Repair Service” means a service consisting in such repair, maintenance, adjustment or replacement of any of the Applicable Systems or such repair or adjustment of any Relevant System as is necessary to restore and maintain a sufficient service for the purpose of complying with Part B; and

“Licensed Area” means the area outlined in red on the map at Annex B.”

2. In condition 38, for paragraph 1 there shall be substituted the following paragraph—

“(38.1) All the Conditions in Part A (the “Specified Conditions”) shall apply to the Licensee, except to the extent that the Director determines otherwise following the procedure set out in paragraph 6 of Schedule 1 to this Licence.”.

3. In each of Conditions 40, 41 and 42 the words “To the extent that this is a Specified Condition” shall be deleted.

4. In condition 43

- (i) for paragraph 1 there shall be substituted the following paragraph—

“**43.1** Condition 43 shall apply to the Licensee, except to the extent that the Director determines otherwise following the procedure set out in paragraph 6 of Part 1 of Schedule 1 to this Licence.”; and

- (ii) for subparagraph (a) of paragraph 2 there shall be substituted the following subparagraph—

- (a) Subject to sub-paragraph (b) below, the Licensee shall provide telecommunication services consisting in the conveyance of Messages other than those specified in Part A, to every person who reasonably requests such services at any place throughout or in any part of the area as specified by the Director within which the Licensee is authorised to run telecommunication systems under this Licence and which contains not less than 100,000 Served Premises.”;

5. In paragraph 1 of condition 57, for the words “Where a determination” to “in the manner set out below” inclusive there shall be substituted the following words—

“For the purposes of Parts A and B of this Licence and where a determination has been made which applies to the Licensee for the purposes of Part C, D, E or F of the Licence, the Licensee shall not unduly discriminate or show undue preference in the manner set out below: ”;

6. In condition 58

- (i) for paragraph 1 there shall be substituted the following paragraph—

“**58.1** For the purposes of Parts A and B of this Licence and where a determination has been made which applies to the Licensee for the purposes of Part F of this Licence, the Licensee shall, except in so far as the Director

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may otherwise consent in writing, publish prices and act in the manner set out below.”; and

- (ii) in paragraph 2, for the words “Within 28 days” to “on which it offers to” inclusive there shall be substituted the following words—

“For the purposes of Parts A and B of this Licence and, in the case of Part F of this Licence within 28 days after the date the Director has made a determination which applies to the Licensee for the purposes of Part F above, the Licensee shall send to the Director a notice specifying, or specifying the method that is to be adopted for determining, the charges, terms and conditions on which it offers to.”.

7. After condition 64 there shall be inserted the following—

“PART J ADDITIONAL CONDITIONS APPLICABLE TO KINGSTON COMMUNICATIONS (HULL) PLC

PROHIBITION ON CROSS-SUBSIDIES

65.1 Where it appears to the Director that the Licensee is unfairly cross-subsidising or unfairly subsidising:

- (a) the Apparatus Supply Business under this Licence, insofar as that Business is carried on in the United Kingdom;
- (b) the provision in the United Kingdom of Mobile Radio Tails Service;
- (c) the Supplemental Services Business under this Licence:

it shall take such steps as the Director may direct for the purpose of remedying the situation.

65.2 The Licensee shall record, except where the Director agrees otherwise, at full cost in its accounting records, any material transfer between any part of the Licensee’s business and any of the businesses mentioned in paragraph 65.1.

65.3 For the purposes of this Condition:

- (a) “supply” and “provision” include supply or provision in the course of one business of the Licensee for the purposes of another such business notwithstanding that there is no supply or provision to any other person;
- (b) a transfer from one business to another business or a company takes place when any thing (including any service or money) produced or acquired by, normally used in, or otherwise at the disposal of, the first mentioned business is made available for the purposes of the other business or the company; and
- (c) “full cost” in the case of money transferred includes the market rate of interest for that money.

65.4 This Condition shall apply with the omission of paragraph 65.1(a) if and for so long as the supply of telecommunication apparatus by the Licensee does not constitute a monopoly situation within the meaning of section 6 of the Fair Trading Act 1973, but with the substitution of the words “Licensed Area” for the words “United Kingdom” whenever they appear in that section.

65.5 In considering whether any cross-subsidy of the Supplemental Services Business under this Licence is unfair, the Director shall have regard to the extent to which the Licensee cross-subsidised that Business for the purpose of satisfying any obligation imposed on it by Condition 1, Part A or Part B.

CONTROL OF HARD-WIRED AND OTHER TELEPHONE RENTALS

66.1 The Licensee shall ensure that no periodic or other charge in respect of renting from the Licensee telephone apparatus to which paragraph 66.2 applies increases by more than the amount of the change in the retail prices index (as so defined) in each period of 12 months ending on 30 June.

66.2 This paragraph applies to telephones, other than telephones described in paragraph 66.3 below (“the excepted telephones”), which are not capable of being connected to the Licensee’s Applicable Systems at a Network Termination Point by means of a fitted plug which complies with British Standard number 6312: 1985 as published on 28 February 1985, for example, telephones which are only capable of being connected to those Systems by means of hard-wiring or round-pin plugs.

66.3 The excepted telephone are:

- (a) ISDN telephones;
- (b) telephones which are connected to the Applicable Systems by means of a single line PBX; and
- (c) telephones which are connected by a means other than a plug of the kind described in paragraph 66.2 above for the purposes of ensuring safety in a hazardous environment.

SEPARATE ACCOUNTS FOR CERTAIN ACTIVITIES

67.1 The Licensee shall:

- (a) maintain accounting records in such a form that the activities of the Supplemental Services Business, the Systems Business and the Apparatus Supply Business are separately identifiable or separately attributable in the books of the Licensee, being records sufficient to show and explain the transactions of each of those Businesses;
- (b) prepare in respect of each complete financial year of the Licensee, or of such lesser periods as the Director may specify but not more frequently than quarterly, accounting statements setting out, and, in the case of yearly statements, fairly presenting, the costs (including capital costs), revenue and financial position of each of the Systems Business and the Apparatus Supply Business and including a reasonable assessment of the assets employed in and liabilities attributable to each of them and showing separately, in the case of yearly accounting statements, the amount of any material item of revenue, cost, asset or liability which has been either:
 - (i) charged from or to any other business of the Licensee together with a description of the basis of the value on which the charge was made; or
 - (ii) determined by apportionment or attribution from an activity common to the Business and any other business of the Licensee and, if not otherwise disclosed, the basis of the apportionment or attribution;
- (c) procure in respect of each of those accounting statements prepared in respect of a complete financial year of the Licensee a report by the Licensee’s auditor for the time being appointed in accordance with the Companies Act 1985 which shall conform to Auditing Standards and in which the auditor shall state whether in his opinion that statement is adequate for the purposes of this Condition; and
- (d) deliver to the Director a copy of each of the accounting statements and of the reports relating thereto required under sub-paragraphs (b) and (c) above as soon

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as reasonably practicable and in any event not later than six months after the end of the period to which they relate.

67.2 Accounting statements prepared under paragraph 67.1(b) in respect of each financial year shall, so far as reasonably practicable, be prepared in the formats and in accordance with the accounting principles and rules which apply to the annual accounts of the Licensee and shall state the accounting policies used.

67.3 For the purposes of this Condition the Licensee shall be free to treat the Apparatus Supply Business as not including any business relating to the supply of apparatus outside the United Kingdom, but when it does so it shall inform the Director.

67.4 Subject to paragraph 67.3, in this Condition:

- (a) “the Applicable Systems” is as defined in Annex A; and
- (b) references to the costs of any business do not include profits of that business.

SUPPLY OF DIRECTORIES AND DATABASES FOR PROVISION OF DIRECTORY SERVICES

68.1 The Licensee shall on request by any public telecommunications operator, subject to the obligations in Condition 2 above, make available to such operator, for the purpose of enabling such operator to comply with such obligations, such directories which the Licensee compiles, in a form approved by the Director.

68.2 If, following a written representation by the Licensee that the market for provision of any of the items in paragraph 68.1 is competitive, the Director determines that such market is competitive in any specified area of the United Kingdom, the obligation upon the Licensee under paragraph 68.1 will cease to apply with respect to the provision of such item in respect of that specified area.

68.3 The Licensee shall supply the items in paragraph 68.1 above at the reasonable request of the person requesting such items. Without prejudice to the generality of the foregoing, the Licensee may refuse to supply such items if the person requesting such items does not undertake to Process the data or information contained in them in accordance with any relevant Code of Practice, or the Licensee has reasonable grounds to believe that the person requesting such items will not comply with Relevant Data Protection Legislation.

68.4 Where the Licensee is requested to supply the items in paragraph 68.1 above, the Licensee shall do so on terms which are fair, cost oriented and not unduly discriminatory, and in a format which is agreed between the Licensee and the person requesting the information, or approved by the Director, where no such agreement is reached”.

SCHEDULE 3

Regulation 3(g)

ANNEX A THE APPLICABLE SYSTEMS

1. The Applicable Systems are telecommunication systems of every description within the Licensed Area provided that a system (“the System”) is an Applicable System only to the extent that it satisfies each of the following conditions:

- (a) the System is one by means of which Messages are conveyed or are to be conveyed:
 - (i) from one Network Termination Point to another such Point;

- (ii) from a Network Termination Point to another place which is neither a Network Termination Point nor a Call Office or from such a place to such a Point;
 - (iii) between a place which is neither a Network Termination Point nor a Call Office and another such place where their conveyance is not by way of provision of a service to another person; or
 - (iv) between a Call Office and any other place;
- but in any case not beyond a Network Termination Point;
- (b) none of the apparatus comprised in the System is Relevant Terminal Apparatus installed on premises occupied by a person to whom there are provided telecommunication services by means of the System.

2. In this Annex:

“Applicable Terminal Equipment” means apparatus which is applicable terminal equipment within the meaning of regulation 4 of the Telecommunications Terminal Equipment Regulations 1992 ([SI 1992/2423](#));

“Approved Apparatus” means apparatus approved under section 22 of the Act for connection to that system or which is Compliant Terminal Equipment;

“Call Office” means telecommunication apparatus not supplied by the Licensee to any particular person but made available for use by the public or a class of the public;

“Compliant Terminal Equipment” means Applicable Terminal Equipment which satisfies the requirements of regulation 8 of the Telecommunications Terminal Equipment Regulations 1992;

“Licensed Area” means the area outlined in red on the map at Annex B;

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

“Network Connecting Apparatus” means telecommunication apparatus comprised in the Applicable Systems which is not Network Termination and Testing Apparatus and is connected to another telecommunication system;

“Network Termination and Testing Apparatus” means an item of telecommunication apparatus comprised in the Applicable Systems installed in a fixed position on Served Premises which enables:

- (i) Approved Apparatus to be readily connected to, and disconnected from, the Applicable Systems;
- (ii) the conveyance of Messages between such Apparatus and the Applicable Systems; and
- (iii) the due functioning of the Applicable Systems to be tested,

but the only other functions of which, if any, are:

- (A) to supply energy between such Apparatus and the Applicable Systems;
- (B) to protect the safety or security of the operation of the Applicable Systems; or
- (C) to enable other operations exclusively related to the running of the Applicable Systems to be performed or the due functioning of any system to which the Applicable Systems are or are to be connected to be tested (separately or together with the Applicable Systems);

“Network Termination Point” means any point:

- (i) within an item of Network Connecting Apparatus at which energy in any of the forms specified in section 4(1) of the Act is conveyed directly to or from apparatus comprised in a telecommunication system other than one in which that Network Connecting Apparatus is comprised; or

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- (ii) within an item of Network Termination and Testing Apparatus at which such energy is conveyed directly to any Relevant Terminal Apparatus;
- (iii) which, in the case of a radio based telecommunication system, is the last point at which Messages are transmitted, or the first point at which Messages are received, in the form of electromagnetic signals, by apparatus run by a person other than the Licensee and lawfully connected to that System;

“Relevant Terminal Apparatus” means:

- (i) “Terminal Apparatus”, that is to say any telecommunication apparatus installed on Served Premises except a Call Office; and
- (ii) any other telecommunication apparatus connected to the apparatus referred to in subparagraph (i) above constituting a system run under a Licence by the person using that Terminal Apparatus; and

“Served Premises” means a single set of premises in single occupation where apparatus has been installed for the purpose of the provision of telecommunication services by means of the Applicable Systems at those premises.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the telecommunications licence granted to Kingston Communications (Hull) PLC under section 7 of the Telecommunications Act 1984 on 30 November 1987. The Schedules to the Telecommunications (Licence Modification) (Standard Schedules) Regulations 1999 (S.I.1999/2450) replace the Schedules to the licence, subject to certain specific amendments. The licence is being amended as part of the implementation in the UK of Directive 97/13/EC of the European Parliament and of the Council on a common framework for general authorisations and individual licences in the field of telecommunications (OJNo. L199, 26.7.97, p.32), which requires that conditions in all telecommunications licences of a similar type should be harmonised, except where objectively justified in particular instances.

A Regulatory Impact Assessment is available and can be obtained from Communications and Information Industries Directorate, Department of Trade and Industry, 151 Buckingham Palace Road, London SW1W 9SS.

The licence modified by these Regulations may be inspected at the Library of the Office of Telecommunications (OFTEL), 50 Ludgate Hill, London EC4M 7JJ.