

*File*

Telecommunications Bill

Consideration of Lords  
Amendments

Monday 9th April 1984

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This bill is substantially the same as the Telecommunications Bill which lapsed at the dissolution of the last Parliament. Significant new amendments are mentioned in the appropriate sections below.

#### PURPOSE OF THE BILL

Information Technology (IT) is a rapidly growing and rapidly developing sector of the economy. Its development demands access to a modern telecommunications network. The Government is determined that:

- \* the telecommunications supply industry should not be held back unnecessarily in responding to expanding IT markets;
- \* that BT should be free to participate on equal terms with private sector companies in this expansion;
- \* that BT's customers should be relieved of the need to finance investment through charges, where this could be done by the markets;
- \* that BT's customers should benefit from free and fair competition in the supply of telecommunications services.

Already, telecommunications is being liberalised. Arrangements are being made for users to have a choice:

- of network - Mercury and the private sector radio telephone companies will give business and some other users a choice of telephone company for their calls;
- of services - users will have a choice of company when they want a service provided over the telephone;
- of apparatus - users will have the choice of whether to buy or rent most of their telecommunications apparatus, from BT or other suppliers.

The present Bill will take the process of liberalisation to its logical conclusion.

#### PROVISIONS OF THE BILL

##### Ownership

BT will be changed from a nationalised industry to a public limited company, BT plc. All its existing assets and liabilities will be transferred to the successor company. In Autumn 1984 the Government plans to sell 51% of its shares.

##### Monopoly

The present exclusive privilege of BT to run the telecommunications system will end. BT and the other operators will run under licences issued by the Secretary of State, and BT will no longer have powers to license other operators. One rival, Mercury, has already been licensed under the British Telecommunications Act, 1981, and expects to begin operating soon.

##### License Provisions

##### \* See Lords Amendments

BT's licence will contain safeguards to prevent the company from abusing the monopoly that it is likely to enjoy in the provision of most telephone services before competition develops. These safeguards have been strengthened by the Government's acceptance of the main proposals of the Littlechild Report, which examined ways of curbing

BT's monopoly after privatisation. These were announced in the House by Mr. Kenneth Baker, Minister for Information Technology on 7th February. The main points are:

a) BT will have a duty to provide a telephone service throughout the country. Rural areas need not fear being deprived of their service. At the moment BT thinks (its accounts are drawn up in such a way that it cannot be sure) that the rural services, which are easier and simpler to run than their urban counterparts, are profitable. Should this cease to be the case the services will be safeguarded by the income BT will derive from the access fees it will charge Mercury, the radio-telephone networks, and Hull for the right to interconnect with its system.

\* See Lords Amendments

b) Income from the access fee will also be used to run the 999 emergency service, which is free, and the call box service. BT acknowledges that it loses about £80 million on the latter. BT will have a duty, imposed by the licence, to maintain these 'social services'

c) BT will be obliged to keep price increases for installation charges, domestic rentals and local calls to a figure fixed below the Retail Price Index for five years. This will ensure a continuing reduction in the real cost of telephone services to the consumer, and a spur to continuing improvements in BT's efficiency. These regulations will be policed by OFTEL, the new Office of Telecommunications that is being set up to monitor BT.

d) BT will lose its present monopoly of the first telephone in each home or business. Customers who have standard sockets will be free to purchase or rent their phone from the supplier they choose.

e) Mercury, the private telecommunications service that the Government has licensed to compete with BT, will have the right to interconnect with BT (see above), as will any other competitors.

f) The maintenance of new equipment will be opened to competition by the Department of Industry. BT will be able to offer its own service, on a fair commercial basis.

g) The Bill also provides for the Telegraph Acts, most of which date from the nineteenth century, to be replaced by a new Telecommunication Code, which will provide for telecommunication operators to be authorised to install their plant in private land, streets etc. The Code has been drafted so as to make sure that no person should unreasonably be denied access to a telecommunications system because of difficulties in connecting his home or business to a public telecommunications system. \* See Lords Amendments

h) The Bill also seeks to amend some provisions in the Wireless Telegraphy Acts.

Cable TV

The new Bill contains a new section, Part 1V, which updates and replaces the existing provisions in The Post Office Act, 1969, on the licensing of cable TV services. These new licensing arrangements are an interim measure as it is likely that responsibility for this will eventually pass to the new Cable Authority. It is necessary to amend the Post Office Act in advance of the Cable Bill in order to remove BT's present exemption from licensing, and thereby fulfill the Government's intention of placing BT on an equal footing with its competitors.

## BT RESULTS

	<u>1973-9</u>	<u>1979-80</u>	<u>1980-1*</u>	<u>1981-2</u>
Turnover £m	3,243.9	3,558.9	4,554.2	5,708.1
Profit/(loss) £m	336.4	129.1	123.9	457.8
Capital requirement £m	1,045.8	1,352.1	985.0	1,837.6
Self-financing ratio	106.1	79.2	111.9	88.8
Capital employed £m	11,995.1	13,540.1	14,574.6	15,285.4

Return on capital  
employed at replacement  
cost:

Target %	6.0	5.0	5.0	5.0
Achievement %	6.9	4.6	4.4	6.5

Tariff index (1970 = 100)  
adjusted for inflation 32.6 74.0 76.8 82.5

\*Accounting policies were modified in 1981, so some figures are not strictly comparable.

The results and accounts for 1982-3 are due out on Wednesday July 20th.

The Corporation reduced its real unit costs by an average of 2.9% pa in the four years 1978-9 to 1981-2, and the figure in 1981-2 was 2.1% below that in 1980-1. The target set in 1978 (currently under review) was a reduction of 5% pa. over the five years 1978-9 to 1982-3.

## CAPITAL PLANS

The target real rate of return for 1982-3 and 1983-4 is 5½%. The EFL for 1982-3 has been revised to £310 million, and capital expenditure in 1982-3 will be £1.59 billion. The EFL for 1983-4 has been set at minus £100 million. BT's capital expenditure programme for 1983-4 will be substantially less at £1.72 billion than was earlier expected - partly because the recession has reduced the demand but also because BT has been able to negotiate lower contract prices and pay settlements.

## POINTS TO MAKE

### Rural Areas

1. Rural Services will not be rundown. BT will have a duty, enforced by OFTEL (see below) to provide a universal service. Anyone who has or wants a telephone will be able to get it. In the new Bill Clause 3 which incorporates this duty, has been redrafted to make it clearer that the requirements to safeguard the rural and other socially necessary services which the bill places on the Secretary of State and the Director General of Telecommunications are statutory duties.

\* See Lords Amendments

2. Charges for Rural Services. BT indicates that the rural services are probably profitable. If they do make a loss they will be financed by the access fees, in the same way as the call box and 999 services. At present BT have a standard rate for rentals and local calls throughout the country, and after privatisation BT will be prohibited by its licence from unfairly discriminating against rural customers.

\* See Lords Amendments

3. Installation Charges. At present BT charges £70 for a domestic connection, and there is no extra charge for the first 100 hours of work needed. Last year only 0.1% of all installations required more than this. The Bill strengthens the hand of the potential rural customer by allowing him to complain to OFTEL if the installation charge is higher than the standard one. OFTEL can instruct BT to

reduce the charge if the Director decides BT is asking too much. At present POUNC can take up these complaints, but it has no powers over BT. So the new arrangements strengthen the rights of the potential rural customer.

4. Remote call boxes. If a box produces less than £185 per annum it becomes a candidate for closure since the maintenance costs are about £2000. BT closed 32 boxes in 1979-80, 30 in 1980-1 and 63 in 1981-2. Local authorities have the power to pay a subsidy towards the maintenance of uneconomic boxes and 7 are so maintained in Wales, maintenance of the call box service will be a social obligation of BT under this Act. This is the first time that this obligation has been imposed by law. The losses on the service will be financed by the access fees (see above), and the provision of call boxes will continue as at present.

Consumer Protection      \* See Lords Amendments

Prices: The introduction of competition is an effective curb on prices; BT has already reduced charges on its 100 most densely used trunk routes and on many international calls. Following liberalisation there was also a significant reduction in the price of telex teleprinters. However, the Government accepts that BT will dominate some telecommunications sectors. Because of this BT will be obliged to keep price increases for domestic rentals, installation charges and local calls to a figure priced below the Retail Price Index for five years. This will ensure a continuing reduction in the real cost of services.

OFTEL: The Post Office Users National Council (POUNC) will no longer deal with telecommunications once BT enters the private sector. A new Office of Telecommunications (OFTEL) will take over these responsibilities. OFTEL will be charged with policing BT's licence and, unlike POUNC, will be able to enforce the remedies it suggests for consumers problems.

Legal Redress: At present BT does not normally provide services under contract and customers cannot normally sue BT for negligence etc. The Bill requires BT to provide services under contract and removes, in most cases, immunity from civil action. Customers will be able to sue BT just as, for example, they can sue shops which supply faulty goods. In order to ensure that BT complies with its licence, and to prevent anti-competitive activities by BT, the new Bill sets out clear provisions for anyone (including BT's competitors) to seek unlimited damages in the courts for losses they incur if BT or any other licensee fails to comply with an order by the Director General of Telecommunications.      \* See Lords Amendments

The Disabled: A new provision in the Bill recognises the needs of the disabled, both those working as telephonists and the disabled or elderly domestic subscriber. It will allow the Government to fund the cost of developing variants of standard equipment to make it suitable for disabled users. This, combined with standards requiring equipment to be adaptable to the needs of the disabled, and the grants already available from the Manpower Services Commission for carrying out the actual adaptation of the equipment, should go a long way to allay the unfounded and misleading fears raised in some quarters about the effect of privatisation on the disabled.

\* See Lords Amendments

The Sale

The precise method of sale will be decided in the light of market conditions at the time. The issue will be the largest ever carried out in this country. The Government hopes that many of BT's 250,000

employees and 10 million subscribers will buy shares. Ways of encouraging them are being considered.

\* See Lords Amendments

The Articles of Association of BT plc will prevent foreign or domestic takeovers. The claims of BT, the pre-1969 pension deficiency and the taxpayer will be considered in relation to the proceeds of the sale. It is hoped that the sale will take place in Autumn 1984.

The Workforce

Telecommunications is a major growth area. The removal of restrictions on financing will allow BT to take maximum advantage of this, along with the other telecommunications firms. There should be more, not fewer, jobs in the industry.

There has been talk of a cut of 45,000 in BT jobs. It is certainly true that BT does need to improve its efficiency. It could provide the present level of services with fewer people. However the BT Bill offers chances to expand the service.

The telecommunications manufacturing industry has lost 40,000 jobs in the last ten years. That shows that the mixture of monopoly and protection does not pay. Since liberalisation, the prospect of an expanding industry has opened up:

1. On the equipment side, new market entrants, such as Mitel, GTE/ Ferranti & Harris, have already put down plants and are generating new jobs in manufacturing. Retailers such as Discoms, Tandy and many other smaller people are already expanding into the liberalised market and are recruiting new staff.
2. Value added services will provide a whole new industry. An increasing number of businesses wish to provide new services on the network and these are expected to provide many new jobs. The recently announced 'Total Access' radio telephone system, to be provided by two companies, Racal and a new consortium BT-Securior, is expected to produce up to 12,000 jobs by 1990.
3. Mercury itself will create new jobs as well as pull through more on the supply side. BT in response has created new posts to provide competitive digital services.

The legislation will safeguard existing employee pension rights, and will in no way disadvantage employees or weaken their pension position. The Government cannot guarantee how pension arrangements will evolve in the future, even in the nationalised industries.

POLITICAL POINTS

\* Nationalisation has had an unhappy history in this country. It has cost over £40,000m at today's prices in grants and capital write-offs since the war (Hansard, 9th November 1982, Col.456). Nor is it popular. A survey by NOP in August 1982 showed that 65% of the electorate and 35% of Labour voters want no more nationalisation. The recent Labour manifesto contained sweeping proposals for further nationalisation, but during the actual campaign Labour leaders tried to play these down.

The nationalised industries' record of service to the customer has often been patchy and their prices have risen more rapidly than prices as a whole. In February 1983, for instance, the overall rate of inflation was 5% but in the public sector it was 13%. Nor in the long run does

nationalisation protect jobs. Under the last two Labour Governments about 200,000 jobs disappeared in coalmining and about 40,000 jobs at BSC went during the 1974-1979 Labour Government.

Some of the practical day to day problems that have beset BT as a nationalised industry are illustrated by the following extracts from a letter sent by its Chairman to his staff in December 1981:

'In the past management hasn't laid sufficient emphasis on labour efficiency and output....'

'...over 40 per cent of field supervisors' time is spent on paperwork. There's more emphasis on reporting up than on securing useful and timely information for the work in hand'.

'We've been hampered by things like inter-union arguments on operating computer terminals in mixed clerical/engineering work areas...'

'...For every two hours spent on installation in the field, one hour is spent in control, line plant allocations and replacements. The number of survey officers has remained unchanged for 20 years, although the need for them has reduced. In America, AT & T installation and maintenance staff average seven visits a day, compared with our average of three'.

'....despite reductions in such things as travelling time over the last two years (ineffective time) still represents 40 per cent on cost'.

'In exchange maintenance, studies show that manning levels could be reduced by better work organisation'.

'Then there's grade drift - people being paid a grade or so higher than their work deserves'.

'The problems are compounded by:

- demarcation problems;
- inflexible work practices;
- rigidity on manning levels; and
- slowness to accept changes'.

'A succession of surveys show that BT salaries are generally above the average; at best, they're near the very top of the market '.

'In addition to the staff's contribution of 6% of salary, BT also contributes to the Pension Fund at the rate of 15½% - much more than most other large organisations'.

'There are many other ways in which the business overspends, eg:

- THQ staff has grown by over 10 per cent since 1978.
- Over 30 per cent extra SSS staff (half of them in THQ) in the same period.
- There are 25,000 THQ staff, some 8,000 RHQ staff, to say nothing of Area HQs.
- Over-generous accomodation, compared with commercial firms, particularly with so may HQ staff in London.
- Slow and expensive promotion and appointments procedures, with seniority often more influential than merit'.

\* The recent Labour Manifesto paid lip service to the need for technological development but at the same time made clear that Labour would only really countenance it provided:

1. That it can be nationalised. Their Manifesto promised not only to retain BT in the public sector, but to forcibly incorporate Mercury into it and then extend the resulting monopoly by giving it the exclusive right to provide cable TV and other cable services. It also promised that Labour would establish a significant public stake in electronics - a pledge that could cost up to £12 billion if the country's top seven electronic companies were to be nationalised.
2. That it can be placed under the control of the unions by making it subject to new technology agreements dictated by them. Labour's luddite instincts are never far from the surface, in their Manifesto they said:

'new technology has brought major job losses in some sectors. Only Labour can plan new technology to meet our commitment to full employment'.

The real objective of new technology agreements is to increase the powers of trade unions and ensure that new technology is not allowed to disturb the employment patterns on which their system is based. This was made clear in Labour's Programme 1982, which was endorsed by last year's Labour Conference and formed the basis for the 1983 Manifesto. It said:

'Trade unions have been relatively successful over the post-war period in extending joint control over day-to-day decisions in their enterprises. Although progress has been uneven, they have in many places extended the frontier of negotiation beyond terms and conditions of employment to include issues formerly within the managerial prerogative. Among these issues are the organisation and pace of work; staffing levels; recruitment and deployment of labour; demarcation and labour flexibility; quality, stock and financial control; grievances and discipline; and health and safety. Workforce influence in these areas has been enlarged mainly through developments in the scope of collective bargaining. Much of the impetus for these developments has come in recent years from the negotiation of New Technology Agreements. These have been accompanied by significant changes in trade union structure. The shift to plant and company bargaining has led to the growth of Joint Union Committees which have strengthened the ability of workforce representatives to pressurise management on key issues relating to the organisation of production'.

The recent experience of the printing industry's attempts to negotiate new technology agreements with the unions is not encouraging. If other unions were enabled by a Labour Government to exercise a similar veto over developments in their industries the results would be disastrous.

\* British Telecom's performance under the last Labour Government was notably lacklustre and contrasts strongly with its performance since 1979. BT's profits have increased rapidly from £123.9 m in 1979-80 to £457.8m in 1981-2. This has been achieved at the same time as tariff increases have been kept below inflation, rebates introduced for low users and many charges for trunk and international calls reduced. When BT is privatised it will continue to hold many of its price increases below inflation (see above). This compares with the



situation under the last Labour Government when charges for local calls doubled in their first year in office, and charges in general rose by 60 per cent between 1975 and 1976 alone.

Furthermore under Labour BT was starved of investment whereas under the Conservatives investment has increased substantially.

Capital Requirement £m

Outturn

1976-7	1977-8	1978-9	1979-80	1980-1	1981-2	1982-3
816	844	993	1,215	1,545	1,898	1,590*

\*estimate

#### ALLIANCE VIEW

The SDP-Liberal alliance take the view that it is irrelevant whether industry is state owned or privately owned and that therefore, as Mr William Rogers has put it, 'a further programme of privatisation...is wholly irrelevant to the major economic and industrial needs of the country' (Hansard, 9th November 1982 Col. 464). In their recent Manifesto the Alliance argued in favour of leaving the present boundaries between the State and private sectors exactly where they are and said the Government should concentrate instead on making the nationalised industries more efficient. They also put forward a scheme of committees and commissions which they hoped would succeed where all others have failed, and would accurately simulate the pressures of the market. This, however, flies in the face of all past experience for, as Mr Patrick Jenkin, the then Secretary of State for Industry, has said:

'Anyone who argues in the light of nearly 40 years' experience that there must be a way of managing State monopolies that will increase their efficiency, satisfy their customers and yield a return on the taxpayers' investment instead of being a burden on the taxpayer must believe in fairies...Every device has been tried and none has solved the fundamental problem of the State industries...The system has failed. Are we to sit back and do nothing about it?' (Hansard, 9th November 1982, Col. 457)

The problem of the nationalised industries is not just one of management but also one of ownership. The three fundamental weaknesses in the public trading sector - monopoly, finance and accountability - are all primarily questions of ownership. The Alliance ignores these problems when it argues that BT's status should remain unchanged.

RE/AM  
12.7.83

## Major Lords Amendments

Details of flotation The Government introduced provision in the Lords to make it possible, in the special circumstances of the flotation, for application forms to be distributed other than with full prospectus. This is consequential of the unprecedented size of the flotation and the number of potential subscribers. The Secretary of State will be required to make arrangements to publish the prospectus in four national newspapers and to make it generally available in public places eg. major banks or post offices. This is in line with European Community regulations. The aim of this amendment is to remove, in this single instance, a barrier to wide ownership of shares that would otherwise not be possible.

Approval of Licences The licence of British Telecom, Mercury and other operators will now be subject to debate and approval by Parliament.

Rural Areas Protection for rural areas has been reinforced. A specific requirement for operators not to show unfair discrimination against persons in rural areas, both in respect of the service provided and in relation to charges of all kinds, has been written into statute.

Competition The Secretary of State and the Director of OFTEL will have a specific duty to carry out their functions in such a way as to encourage effective competition within the United Kingdom. In addition they will be required to assist United Kingdom companies to compete effectively abroad, and to assist them in developing new markets overseas.

Directory Information Services The Secretary of State and the Director of OFTEL will be under a specific duty to ensure that telecommunications operators provide a directory information service. This provision will in any case encourage greater use of the system. There is now a specific requirement that this service should be provided free of charge for blind persons or other persons where disability prevents them from using printed telephone directories.

Consumer Protection The statutory provision for the establishment of advisory bodies to assist the Director of OFTEL, has strengthened and extended for the protection of consumers. The Secretary of State will now be responsible for their establishment. He will be under a specific duty to ensure that special attention is given to including on these bodies, members who are "familiar with the special requirements and circumstances of consumers, purchasers and other users" of the telecommunication network. In addition provision has been made to establish two further bodies to cover the interests of small businesses and those who are disabled or of pensionable age.

Telephone Tapping The Government has given a firm commitment to bring forward legislation on the interception of communications in the next session of Parliament. It will include matters covered specifically in the Lords amendment which was subsequently reversed and will also take account of the European Court of Justice ruling on the "Malone" case. In the interim the Government will regard itself as bound by the criteria and procedures set out in the White Paper "The Interception of Communications in Great Britain".

Disruption of the Network Action to wilfully disrupt telephone and other communications will produce a liability for civil damages on a breach of licence conditions. The previous provisions for criminal sanctions against strikes and similar actions has been dropped.

Extension of the Right to sue on a breach of licence This amendment, Passed against Government's wishes, extends the right to sue for damages of anyone suffering a loss because an operator has breached a licence. The original provisions of the Bill allowed claims for damages only for the period after action had been taken, against a breach of licence conditions, by OFTEL. This limit is removed by this amendment .

The Government's view has been that licence conditions should be a matter for the Director-General of OFTEL and his staff.

Lord Mackay of Clashfern made this clear in the report stage of the Bill:

"It will not be possible for licensee not to comply with their licence conditions for significant periods of time without being subject to the director's power of enforcement and hence subject to action for damages"

(House of Lords 19/3/84 Col 997)

If a licence fails to comply with the terms of a provisional order made by the Director of OFTEL, anyone suffering damage will be able to claim compensation from the date of that first order.

The Governments reasoning behind not making licence conditions directly enforceable in the courts by individuals affected, was fourfold:-

- The use of OFTEL with its specialist staff would ensure that the enforcement procedures were effective, swift and cheap so far as those concerned are affected by them.
- Individuals, whether individual subscribers or small firms, do not have sufficient technological and legal understanding to mount effective actions themselves.
- The Government has sought to avoid the problem of excessive litigation.
- In some areas it is not possible to draw up precise licence conditions. Interpretation will therefore be open to a degree of uncertainty. The Government's view is that the Director of OFTEL is best placed to make the necessary judgements rather than, for example, the competitors of the licensee (See also below)

Action to prevent intermittent Contraventions of licence Conditions

Government has strengthened the enforcement procedures open to the Director of OFTEL when taking action against a breach of licence conditions. The loophole whereby licensee are able to circumvent the enforcement procedures by intermittent acts in contravention of their licence obligations, is closed. Under the new provision the Director will be able to institute enforcement procedures, where he decides that, although a breach has been remedied, on the evidence before him it is likely to be repeated.

Installations made on Private Land

This alters the requirement of operators to seek the consent of an occupier before installing his apparatus on private land. Under this amendment an operator will have to seek the consent of the freeholder in all cases other than straight forward cases involving service lines. However a landlord will be prevented from raising unreasonable objections to a tenants' desire to have a telephone service.

As Lord Cockfield has said:

"We have been even handed in ensuring that the rights of the owner are protected when lines and apparatus are installed, at the same time ensuring that the tenant who wants a telephone cannot be frustrated by his landlord.

(House of Lords 24/3/84 col 402)