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Secretary of State for Industry

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// March 1983

The Rt Hon David Howell MP  
Secretary of State for Transport  
Department of Transport  
2 Marsham Street  
London SW1

PS/Mr Baker  
PS/Mr Butcher  
Mr Croft  
Mr Solomon  
Mr Macdonald  
Dr Thynne  
Dr Dobbie  
Mr Ellison

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FILE

*Dear David,*

Thank you for your letter of 1 March about the provisions in the Telecommunications Bill authorising licensed telecommunication operators to install their apparatus in highways. I am sorry that you and Lynda Chalker have not had replies to your earlier letters on the subject; the issues raised are complicated and those concerned have been pre-occupied with the progress of the Bill in Committee.

2 I entirely agree with you that we need to strike the right balance between the development of telecommunications and a free flow of traffic and the integrity of road surfaces. We did of course discuss this issue in some detail last summer and my letter to Willie Whitelaw of 16 July drew special attention to the problem created by people digging up road surfaces. I went on to stress that it was necessary for me to have the powers which BT has long possessed to authorise operators to place telecommunication lines but I undertook to consult my colleagues before using my licensing powers to avoid a proliferation of people digging up the highway. I also proposed new arrangements for imposing conditions on those who were authorised to do so. Your letter of 26 July positively welcomed both my general proposals and the reassurances I gave for protecting traffic flow.

3 We returned to the issue in Cabinet on 2 December when we considered and endorsed E(TP)'s conclusions on cable policy. (E(TP) had agreed that the General Development Order should be amended to include the laying and maintenance of cable systems as "permitted development" on the grounds that local authorities should not be able to impede cable development by use of existing planning etc powers. E(TP) also agreed that environmental safeguards should be included in licences or in the amendments to the GDO and not be left to local authorities.



4 These decisions clearly mean that as a Government we have decided to take control ourselves of the licensing of cable systems and that local authorities should not retain any licensing function or other power to hinder the installation of cables and other apparatus, whether by the exercise of planning control or by the withholding of permission to install apparatus. We cannot therefore meet the local authorities' main proposal that the installation of cable systems in or over maintainable highways should be the subject of local authorities licensing control under section 181 of the Highways Act. This suggestion has also been put forward by your own officials. This decision will be unwelcome to the associations and we must take care with the presentation of the issues.

5 In practice the local authorities' case is based on a misunderstanding of the existing law; they do not appear to realise that under the Telegraph Acts British Telecommunications has powers to licence private telecommunication operators to place apparatus in highways and that there could be a proliferation of people authorised to dig up highways under the existing law. Seen in this light the Bill represents a very considerable improvement in the safeguards enjoyed by highway authorities. First, the power to licence operators to install apparatus in highways is removed from BT and is transferred to the Secretary of State who is of course responsible to Parliament. Second, when an operator is licensed to use the provisions of the new Telecommunications Code to install apparatus in highways etc, this can be done subject to exceptions and conditions which, as I said in my letter of 16 July, can be designed to minimise any interference with road traffic and surfaces. This is an entirely new arrangement. Third, special safeguards are built in to the arrangements for modifying licence conditions under Clauses 10 and 13 of the Bill so that the Secretary of State can prevent modifications which he thinks undesirable on environmental or transport grounds. Fourth, before the provisions of the Code are applied to anyone so that they have powers to install apparatus in highways, public notice must be given of the intention and the Secretary of State is formally obliged to consider representations and objections. This arrangement gives the highway authorities an ample opportunity to raise objections and I would not propose to adopt your officials' ideas about a two stage public consultation procedure with highway authorities being consulted before the other interested parties.

6 These are significant safeguards on the face of the Bill. There is moreover the additional safeguard which you and I agreed on last summer that I would not exercise my powers to licence operators to dig up roads without consulting colleagues. This assurance should be particularly welcome to the local authority associations since your special status as a highway authority in your own right means that you will take account of their highways interests as well as your own when we discuss the granting of a



particular licence. I gather, however, that your officials are unhappy about an assurance and fear that it may be disregarded in time. I cannot recall an assurance like this being disregarded.

7 Finally, there is a technical problem in the drafting of the Bill. Under the Telegraph Acts the consent of the highway authority is required before apparatus is placed overhead in a highway but not when it is placed underground. Our Cabinet decisions mean that there should be no provision for local authorities to give any consent, whether the apparatus is placed overhead or underground. Unfortunately, Schedule 4 of the Bill as drafted includes provisions which require BT and other operators to whom the Telecommunications Code is applied to obtain highway authority licences before installing both overhead and underground apparatus. I shall need to make two small amendments to Schedule 4 at the Report Stage to rectify this mistake. The Associations know of the problem.

8 Against this background I think there is no reason to depart from our previously agreed policy line. I would propose to write ... to the local authority associations on the lines of the enclosed draft letter.

9 I am copying this to Nicholas Edwards, George Younger and Jim Prior.

Your ever  
Patrice



DRAFT LETTER TO SEND TO:

A L Sayers Esq  
Chairman  
Planning & Transportation Committee  
Association of County Councils  
Eaton House  
66A Eaton Square  
London SW1

TELECOMMUNICATIONS BILL

I am sorry that it has taken me some time to send you a full reply to your letter received here on 14 December about your Association's concern about the arrangements for authorising licensed telecommunications operators to install their apparatus in highways. The issues you raise are important and I have given them very careful consideration.

I share your fundamental concern. The new arrangements for telecommunications, including the arrangements for cable, must pay proper regard to the interests of highway authorities and users of the highway. There should be no unnecessary proliferation of people authorised to break open the surface of highways and those who are authorised to do so should be obliged to meet the reasonable costs of reinstatement. I am also concerned to avoid unnecessary interference to the free flow of traffic. All this is I think common ground between us.

I also hope that we share common ground about the vital importance of telecommunications not only to commerce and industry but also for social and domestic purposes. Local authorities, for example, have an interest in efficient telecommunications for the emergency services. An improved range and quality of telecommunication services is expected over time to reduce the need for much business travel and so could reduce both the cost of road maintenance and the amount of traffic congestion. Moreover, we need to bear in mind that private telegraph and telephone companies had rights to install their apparatus in highways well before motor vehicles were invented.



Some conflict between the interests of highway authorities and those who use and rely on telecommunications is I fear unavoidable. I have been anxious to strike a proper balance between the two sets of interests.

The first thing to say is that your letter may imply that many organisations are likely to be authorised to break open highway surfaces. This is not the case. There have of course been powers for operators to be authorised to break open street surfaces for many years but these powers have been used sparingly. Under the new telecommunications regime I expect little change. BT will of course need to be authorised subject to conditions to carry on installing its apparatus in highways and so will the City of Kingston upon Hull in its licensed area of operations. Apart from these two operators we have recently licensed the Mercury consortium to run a telecommunications network in competition with BT and I have it in contemplation to apply the provisions of the new Telecommunications Code to Mercury. No final decision has been taken on this and the public consultation procedures which I describe below will be followed. We have, as you know, announced that we do not intend to licence a further telecommunications network for the foreseeable future and Mercury itself is planning to use cellular radio in its local distribution network which will substantially reduce the need to install local cables or to dig up road surfaces. There is also the question of local broadband cable systems where we are currently working out our proposals and where fresh legislation will be required. I can therefore assure you that your members will not be confronted with a sudden large proliferation of companies authorised to dig up roads.

Apart from this the Bill itself contains a number of safeguards and since these are not widely understood it might be helpful if I explained them.

First, the present arrangements under which operators can be licensed by British Telecommunications to install apparatus in highways are clearly inappropriate; there is no provision for Parliamentary control and the interests of highway authorities can be completely disregarded. The Bill changes the position by removing BT's licensing powers and ensuring that only the Secretary of State can apply the provisions of the new Telecommunications Code to an operator. The Secretary of State will be answerable to Parliament and the arrangements for authorising any operator to dig up streets will be brought under proper public scrutiny and control.

Second, Clause 9 of the Bill introduces entirely new arrangements to place conditions and exceptions on the way that telecommunication operators exercise their rights under the Code. This provision has been included so that the Government can have



a flexible and effective power to protect environmental and other interests and in particular to minimise interference with road traffic and surfaces. I hope your Association will be able to offer us advice on these conditions and I return to this point later in this letter.

Third, telecommunication operators will be under the direct oversight of the new Director General of Telecommunications, who will have duties to monitor observance of licence conditions and to consider complaints. He will have a power to order licensees to honour licence conditions in any cases where they may breach them and these order-making powers have much the same effect as court injunctions. Breach of an order can lead to fines or even imprisonment. The position will be that highway authorities will be able to draw problems to the Director General's attention and he will be able to take corrective action when this is appropriate.

Fourth, special arrangements are built into the arrangements for modifying licence conditions to ensure that the Secretary of State can intervene to prevent modifications which he thinks undesirable on environmental or other transport grounds. The Secretary of State could use these powers to protect the interests of highway authorities.

Fifth, because of the concern we know that highway authorities and others feel about the possible impact of our authorising an operator to exercise the Telecommunications Code powers to dig up streets, we have made it a requirement that once the Bill is fully in force there must be a formal procedure involving public notice and a consideration of objections before such an authorisation can be given under Clause 9. This will give your Association and individual authorities an opportunity both to make objections to an authorisation and to suggest the inclusion of conditions in the licence to be issued to the operator concerned. The Bill requires the Secretary of State to consider such representations, thus ensuring that consultation is genuine and not a formality.

Finally, my colleague David Howell is as you say a highway authority in his own right and shares your concern. I have given him an assurance that no licence authorising use of the Telecommunications Code powers will be granted except after collective discussion among Ministers. This will ensure that the interests of highway authorities will not be overlooked.

These safeguards are in addition to the well established arrangements under the Public Utilities Street Works Act which enable highway authorities to take disputes about the installation of plant to arbitration.



Turning to the specific proposals in your letter, you are correct to say that in the Bill as printed sections 178 to 181 have been mistakenly applied so that telecommunication operators are subject not only to licensing by the Secretary of State but also to local licensing. This arrangement was not intended and it would be a bureaucratic muddle to have two conflicting licensing jurisdictions for the same activity. It is our firm intention to protect the interests of highway authorities by the inclusion of conditions in any licence issued by the Secretary of State. The Bill will need to be amended on this point.

We are, however, preparing amendments to the Bill to place beyond doubt our ability to require licensed operators to provide bonds so that members of the public and highway authorities are protected against damage caused by an operator if the operator goes into liquidation or loses his licence.

Finally, we have included in the Bill a power to attach conditions to limit the use an operator can make of the provisions of the Telecommunications Code and we would want to use this power in a way which helped allay your concerns. The first licence to apply the provisions of the Code will be that granted to British Telecommunications later this year and we are turning our minds to the precise terms of the licence conditions. Could I invite you and your members to let me have, by the end of May, your detailed suggestions on the points, for example about reinstatement of surfaces, which you would wish to see covered in the BT licence.

I am writing in similar terms to the other local authority associations.

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Department of Industry  
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TO <i>Mr Ellison</i>	COPIES TO
FOR ADVICE (AND	<i>RS/B</i>
DRAFT REPLY IF	<i>RS/B</i>
APPROPRIATE)	<i>RS/B</i>
PLEASE BY:	<i>Mr Craft</i>
<i>N 6/4/83</i>	<i>Mr Solomon</i>

29 March 1983

*Dear Patrick,*

Thank you for sending me a copy of your letter of 11 March to David Howell about provisions of the Telecommunications Bill relating to road works. I have now seen David Howell's reply of 21 March.

I think we are all agreed about the need to strike an appropriate balance between the public interest in improving telecommunications, and the public interest in minimising traffic disruption and damage to the roads. We do not in Scotland have any provisions corresponding to section 181 of the Highways Act 1980, so I have no objection to your proposal to remove local authority licensing control over cable installation. I do, however, think it important that local highway authorities should be consulted and should have their views taken into account before you grant a licence to a telecommunication operator which would give him rights to carry out road works in their areas.

I understand that the Convention of Scottish Local Authorities does not particularly mind which Government Department carries out such consultation, so long as it takes place. Under your present proposals, you would consult me before granting a licence affecting Scotland. In addition to considering my own interest as trunk road authority, I would then have to consult the local highway authorities concerned. This would involve my Department in a certain amount of "post office" work.

I can therefore see the attractions in David Howell's proposal, set out in the sixth paragraph of his letter, that the Bill should provide for you to consult the highway authorities concerned. I would still have to be consulted as trunk road authority, but the local authorities could make their views known direct to your Department. Furthermore, while I am sure your undertaking to consult colleagues would be honoured in practice, I can see presentational advantages from the local authorities' point of view in having a statutory right to be consulted.



In conclusion, I think David Howell's suggestion is a useful one and I hope you will agree to table an amendment to the Bill accordingly. I shall, of course, be happy to join in any discussion on this subject.

I am sending copies of this letter to David Howell, Nicholas Edwards and Jim Prior.

Yours very,

George



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The Rt Hon Patrick Jenkin MP  
Secretary of State for Industry  
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21 March 1983

*Dear Patrick*

Thank you for your letter of 11 March about the provisions of the Telecommunications Bill which affect highway authorities and road users. I am grateful that you have given this your personal attention and that we are agreed about the need to strike the right balance between the interests of telecommunications services and those of highway authorities and road users. I remain concerned that insufficient weight is being given to the latter.

Let me first say that I am fully committed to our agreed policy that telecommunications systems need to be developed and without too much restriction. I should like however to set the record straight about what was agreed between us last July. Your letter and the accompanying document about the reform of the Telegraph Acts stated that

- i. initially only British Telecom and Hull would be licensed;
- ii. other licensees authorised to carry out the installation of apparatus would have conditions attached to their licences;
- iii. with regard to local systems, you proposed to do nothing "to alter the existing arrangements under which highway authorities... are able to license the placing of telecommunications lines in streets."

It was on that basis - as well as on the promise of consultation - that I welcomed your proposals.

While I welcome your reassurance about consultations with colleagues, the Bill which is now before the House would give you power to license any number of telecommunications operators and would not require you to attach any condition to the licences. I note that you also say that the removal of British Telecom's powers to license private telecommunications operators to place apparatus in highways represents a "very

considerable improvement" in the safeguards enjoyed by highway authorities. But, of course, that power was originally granted to British Telecom when it was a Government Department; the only extant example of the use of the power is the authorisation of the Hull system 80 years ago and, if British Telecom had in the more recent past sought to license any other operator and grant it the powers of a statutory undertaker, we in this Department would probably have resisted such a move and sought a change in the law.

Another difficulty is that consultation with this Department would not be sufficient to safeguard the interests of local highway authorities. That is because I am the highway authority only for trunk roads; I do not have detailed knowledge of the roads for which local highway authorities are responsible and consultation with me would mean that I would have to seek the views of the highway authorities themselves.

With regard to the amendments I have proposed, my own strong preference would be to retain S.181 of the Highways Act but with a right of appeal. I accept however that our policy as a Government is that local authorities should not be in a position to hinder the development of the telecommunications systems and I accept also the argument that there would be a "bureaucratic muddle" if a person to whom a licence had been granted were required to seek a further consent. Provided therefore that some other safeguard is introduced, I will not argue with your proposal to amend the Bill to remove the S.181 powers from highway authorities when a licensed telecommunications operator has been authorised to use the telecommunications code. (But I should like the substance of the charging provision, S.181(10), to be retained; this might be achieved by amending Clause 9 with regard to the conditions which may be attached to licences.)

I must however maintain my proviso and ask you to agree to my other, less stringent, proposal. That is that the Bill should be amended to require the Secretary of State first, to consult the highway authority concerned before announcing that he proposes to grant a licence to which the Telecommunications Code would apply and secondly, to take account of reasonable objections by the highway authority in considering whether or not to grant a licence. If he decided to proceed with the licence, conditions should be attached to it which took account of reasonable representations by the highway authority. I do not believe that, even though consultation with colleagues is welcome, the consultation processes at present proposed in the Bill go far enough to protect the interest of highway authorities since, by the time they were set in motion, you would have already taken the view that you proposed to grant a licence.

Thank you for copying to me your draft reply to Councillor Sayers. I shall be glad if you will hold it over until we

have reached agreement between ourselves. When you do write, however, I suggest that you should drop the last sentence in the third paragraph - traffic preceded the telegraph and telephone companies!

I trust that you will be willing to amend the Bill in the way that I have proposed in paragraph 6 above. If however you see difficulty about that, let us have an early meeting together with Nicholas Edwards, George Younger and Jim Prior, to whom I am sending copies of this letter.

*G. A. C.*

*David*

DAVID HOWELL



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1 March 1983

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*Dear Patrick*

As I think you know, and as I mentioned in Cabinet, I am concerned at the wide powers which the telecommunications Bill would provide for licensed telecommunications operators to install their apparatus in highways and to inspect and repair it. I wrote to Kenneth Baker in December supporting the proposals of Councillor Sayers of the Association of County Councils for the amendment of the Bill to protect highway authorities by retaining Section 181 of the Highways Act 1980. Since then I know that Lynda Chalker has taken up the issue more than once with Kenneth Baker but she has had no reply. Neither has Councillor Sayers who has written again to Kenneth Baker and copied his letter to me.

Now that the Bill is making rapid progress in Committee, I am concerned at this lack of response. May I ask you to look at this yourself and let me know your views? I am sure you will agree that we need to strike the right balance between the development of telecommunications and the preservation of our highways. My view is that this is not achieved in the Bill as at present drafted.

*Yours*

*David*

DAVID HOWELL

TOM Ellis	COPIES TO
FOR ADVICE (AND	Mr Baker
DRAFT REPLY IF	Mr Butler
APPROPRIATE)	SEC
PLEASE BY: Noon	Mr Croft
	Mr Solomon
7/3	

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