

08/04/2009

Dear Colleague,

**NOTICE OF IMPLEMENTATION
MODIFICATION PROPOSAL No: 0213V**

“Introduction of User Pays Governance Arrangements into the UNC”

Please note that Modification Proposal No 0213V will be implemented with effect from 06:00 hours on 17/04/2009. The Final Modification Report, Version 4.0, was signed by Ofgem on 07/04/2009.

The new Code text resulting from this Modification follows:

Modified Text:

MODIFICATION RULES

Include the following definitions in paragraph 2.1 to read as follows:

“Implementation Costs”: the costs of analysis, development and/or operation of the User Pays Service as proposed by the User Pays Modification Proposal;”

“User Pays Guidance Document”: the guidance document produced and published by the Transporters which contains guidance in respect of the provision of cost estimates pursuant to these Rules and the content of cost analysis documents and cost allocation decisions in respect of a User Pays Modification Proposal;”

“User Pays Modification Proposal”: a Modification Proposal which contains a proposal for a User Pays Service;”

Add new paragraph 5.13 to read as follows:

5.13 User Pays Guidance Document

The production of a User Pays Modification Proposal (including the provision of cost estimates and other information in respect of a User Pays Modification Proposal) pursuant to these Rules shall have regard to the User Pays Guidance Document which may be amended only by a determination of the Modification Panel in accordance with paragraph 5.1.2(a).”

Amend paragraph 6.2 to read as follows:

6.2 Form of Modification Proposals

6.2.1 Each Modification Proposal made pursuant to paragraph 6.1.1 or 6.1.2:

- (a) shall be in writing and shall specify whether it relates to the Uniform Network Code or an Individual Network Code;
- (b) shall set out in reasonable but not excessive detail the nature and purpose of the Modification Proposal;
- (c) shall set out the basis upon which the Proposer considers that it would better facilitate the achievement of the Relevant Objectives;
- (d) shall detail the sections and paragraphs of the Uniform Network Code or the Individual Network Code which are to be amended or otherwise affected by the Modification Proposal;
- (e) shall, if the Proposer considers that the Modification Proposal should be treated as an Urgent Modification Proposal, identify the Modification Proposal as such and indicate the Proposer's justification for such belief;
- (f) shall, where it is made by a Transporter pursuant to Standard Special Condition A11(14), state that it is so made;
- (g) shall state the name of the Proposer and the Proposer's representative;
- (h) shall, without prejudice to the Modification Panel's right of determination pursuant to paragraph 7.2, state the Proposer's preference as to whether the Modification Proposal should:
 - (i) be subject to the review procedures;
 - (ii) proceed to the Development Phase;
 - (iii) proceed to the Consultation Phase; or
 - (iv) be referred to a Workstream in accordance with paragraph 7.4 for discussion;
- (i) may state the Proposer's opinion of the likely impact of the implementation of the Modification Proposal upon Users' computer systems and/or manual processes and procedures;
- (j) may state the Proposer's view of possible implementation timescales for the Modification Proposal; and
- (k) may include the Proposer's Suggested Text, including that prepared for consideration by the Transporters when preparing the text of the Modification pursuant to paragraph 9.6;
- (l) shall state whether or not it is a User Pays Modification Proposal ;”

Add new paragraph 6.2.7 to read as follows:

“6.2.7 A User Pays Modification Proposal shall:

- (a) state the reasons why it should be a User Pays Modification Proposal;
- (b) contain:
 - (i) an estimate of the Implementation Costs; and
 - (ii) an indicative User Pays Charge;
- (c) where it proposes that Users pay a proportion of the Implementation Costs, contain:
 - (i) an apportionment of the Implementation Costs between Users and Transporters; and
 - (ii) an apportionment of the Implementation Costs between Users;
in each case, together with the reasons for such apportionment; and
 - (iii) the period in which the Implementation Costs are to be recovered.”

Amend paragraph 7.2.3 to read as follows:

“7.2.3 Subject to paragraph 7.2.2, the Modification Panel may, without prejudice to paragraph 7.2.4, determine that:

- (a) a Modification Proposal:
 - (i) should be subject to the review procedures under paragraph 11;
 - (ii) should proceed to the Development Phase (in which case the Modification Panel shall discuss, and shall (in accordance with paragraph 7.6) request the Transporters to finalise, the Terms of Reference to be applicable); or
 - (iii) should proceed to the Consultation Phase in accordance with paragraph 7.3; or
- (b) a Modification Proposal or Third Party Modification Proposal:
 - (i) should be referred to a Workstream in accordance with paragraph 7.4 for discussion (and the Modification Panel may determine the Terms of Reference for such work (including terms as to the identity of any third parties to be consulted) and the date upon which it requires the Workstream to submit its report); or
 - (ii) should be deferred to a subsequent meeting of the Modification Panel for further discussion; and

“(c) where Modification Proposal is a User Pays Modification Proposal, at any time before it proceeds to the Consultation Phase in accordance with paragraph 7.3 the Transporters shall:

- (i) in accordance with a period determined by the Modification Panel, provide a rough order of magnitude assessment,

which will include a cost estimate(s) for the User Pays Service , an indicative User Pays Charge(s) and, having regard to the User Pays Guidance Document a commentary in respect of these; and

- (ii) request from the Authority a View on whether the proposed cost apportionment and User Pays Charges are appropriate and following receipt of such View circulate it to the next meeting of the Modification Panel.”

Add new paragraphs 7.2.6, 7.2.7 and 7.2.8 to read as follows:

“7.2.6 Where the Modification Panel considers that a more detailed analysis and cost estimate is required in respect of a User Pays Modification Proposal it may:

- (a) determine that the Transporters prepare and submit to the Modification Panel (within a period determined by it) such an analysis and estimate; and
(b) where its assessment concludes that such analysis and estimate is satisfactory, make a determination in accordance with paragraph 7.2.3(a)(iii).

7.2.7 Where the Transporters fail to comply with paragraph 7.2.6 , the Transporters shall provide to the Modification Panel:

- (a) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two (2) Business Days after the final date for such submission; and
(b) a date by which the detailed analysis and cost estimate will be provided, having regard to the explanation provided.

1.2.8 The obligation on the Transporters pursuant to paragraph 7.2.3(c) shall cease:

- (a) in accordance with a determination by the Modification Panel; or
(b) where the User Pays Modification Proposal is withdrawn pursuant to paragraph 6.5.1(a) or varied pursuant to paragraph 6.5.1 (b).”

Amend paragraph 7.3.1 to read as follows:

“7.3.1 If the Modification Panel determines pursuant to paragraph 7.2.3(a)(iii) or 7.2.5(b) that a Modification Proposal or Third Party Modification Proposal should proceed to the Consultation Phase:

- (a) the Modification Panel shall:

- ~~(a)~~(i) determine whether the preparation of text is required with the Draft Modification Report;
- ~~(b)~~(ii) inform the Transporters if it determines that the time periods set out in paragraph 9 for the Consultation Phase should, in its opinion, be deviated from in relation to the relevant Modification Proposal or the Third Party Modification Proposal; ;

(b) where the Modification Proposal is a User Pays Modification Proposal:

(i) unless the Modification Panel determines otherwise, the Transporters shall prepare and submit to the Modification Panel (within a period determined by the Modification Panel) and include within the Draft Modification Report:

- (1) the most accurate cost estimate for the User Pays Service which is available at such time ; and
- (2) the associated indicative User Pays Charge;

(ii) where the Transporters fail to comply with paragraph (b)(i)(1) and/or (b)(i)(2) by the final date for such submission, the Transporters shall provide to the Modification Panel:

- (1) a written explanation as to reasons for such failure at the earliest opportunity and in any event no later than two (2) Business Days after the final date for such submission;
- (2) a list of information required to enable the most recent cost estimate to be prepared;
- (3) a date by which the cost estimate will be provided, having regard to the explanation provided.”

Add new paragraph 9.3.7 to read as follows:

“9.3.7 Where the Modification Proposal is a User Pays Modification Proposal, Ofgem may request the Transporters to prepare and submit a cost estimate for the User Pays Service where the Modification Panel has not done so.”

Amend paragraph 9.4.1 to read as follows:

“9.4.1 In addition to identifying which paragraph of these Rules the Modification Report is made pursuant to, each Modification Report shall, subject to paragraphs 9.4.5 and 10.2 and to the extent relevant and that the Transporters have been made aware:

- (a) set out: ...
- (b) ... etc.
- (s) set out a high level summary of views expressed in the representations, which may be satisfied by stating the number of representatives in favour of, and the number of representatives against the implementation of the Modification Proposal (or Third Party Modification Proposal);
- (t) where it is a User Pays Modification Proposal, contain the most accurate cost estimate for the User Pays Service which is available at such time and the associated indicative User Pays Charge;”

Add new paragraph 9.6.4 to read as follows:

“9.6.4 Where the Modification Proposal is a User Pays Modification Proposal, the request or direction pursuant to paragraph 9.6.1(a)(ii) or (b)(ii) will be deemed to be a request for text in respect of a proposed amendment to the Agency Charging Statement and such text will be prepared at the same time the text prepared pursuant to paragraph 9.6.1(a)(ii) or (b)(ii).”

Amend paragraph 12.8.1 to read as follows:

“12.8.1 The Transporters may decide to seek a View from the Authority:

- (a) on any matter arising (under these Rules or otherwise) from a Modification Proposal at any stage prior to the date on which the Transporters finalise the Modification Report; ; the Transporters may decide to seek a View from the Authority on any matter arising (under these Rules or otherwise) from a Modification Proposal. and
- (b) in respect of the proposed funding arrangements for a User Pays Modification Proposal, at any stage prior to a determination under paragraph 7.2.3(a)(iii).”

Transportation Principal Document Section B paragraph 1.7

Add new paragraph B1.7.14 to read as follows:

“1.7.14 Where any User Pays Modification Proposal is not implemented but it is determined that a portion of the Implementation Costs should be paid by Users in

accordance with the User Pays Charge set out in the Agency Charging Statement,
such User Pays Charge shall be invoiced in accordance with Section S.”

Yours sincerely,

John Bradley
Modification Panel Secretary