

28 November 2003



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Dear Nick

**Urgent modification to the Balancing and Settlement Code - Modification Proposal P150:
“Targeting excess costs of PNE appeals process at unsuccessful appellants”**

Thank you for your letter dated 27 November 2003.

In your letter you base your justification for urgent treatment of the proposal on the basis that failure to expedite resolving the issue could lead to any change to the appeal fee being dealt with retrospectively. You state that if P150 were to be resolved before the appeals window has closed then it could be treated as a prospective modification and would avoid uncertainty of appellants over who would pay for the process if ELEXON costs exceed the £5,000 appeal fee.

The Authority will continue to treat each proposal on its own merits. However, in all cases, the Authority believes that a modification should only be treated as urgent if the modification could not appropriately be treated as non-urgent. It is currently the view of the Authority that, in general, urgent modifications are likely to exhibit at least one of the following characteristics:

- There is a very real likelihood of significant commercial impact upon NGC, industry parties, or customers if a proposed modification is not urgent;
- Safety and Security of the network is likely to be impacted if a proposed modification is not urgent; and /or
- The proposal is linked to an imminent date related event.

The following decision in no way considers the merits of the modification proposal but considers only matters relating to urgent treatment.

The Authority understands the concern of the Panel regarding a retrospective decision on this proposal and the potential detrimental effect that it could have on the ability of potential appellants to assess the financial risk of an appeal.

The Authority have carefully considered the likely cost of appeals relative to the Past Notification Error (PNE) process itself and have concluded that they are unlikely to be of the same order of

magnitude, in the light of the very limited grounds for appeal. For this reason, it cannot be said that the effect of a decision would create a very real likelihood of a significant commercial impact on either potential appellants or non-appellants.


The Authority notes the desirability of avoiding retrospective effects arising from Code Modification decisions. However, we have previously noted that there could be circumstances where the Authority clearly indicates in advance that particular terms of the code may be subject to change, in which case a decision which has retrospective effect may be able to better facilitate the relevant objectives. The Authority is making such an indication in this matter.

In consideration of the above, the Authority does not consent to Modification Proposal P150 being treated as an Urgent Modification Proposal for the purposes of section F2.9. of the BSC.

Modification Proposal P150 should therefore be subject to the normal modification procedures as detailed in section F of the BSC.

Please call me on the above number if you would like to discuss any of the issues in this letter further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'N. Simpson', written over a horizontal line.

Nick Simpson

Director of Industry Codes

Signed on behalf of the Authority and authorised for that purpose by the Authority