



Office of Utility Regulation

Annual Licence Fees

Guidelines for Telecommunications Licensees

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1. Introduction

This document provides telecommunications operators licensed by the Office of Utility Regulation (“OUR”) with Guidelines on the procedures to be used for the calculation and collection of annual licence fees which the Director General (“DG”) uses to fund the ongoing activities of her Office carrying out the statutory functions assigned by law.

These procedures are subject to amendment and updating and any changes will be notified to the OUR’s telecommunication Licensees and republished on the OUR website. The DG is not bound by this document and may amend it from time to time.

2. Legislative Background

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“The Regulation Law”) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecommunications Law”), together empower the DG to regulate the telecommunications market in the Bailiwick of Guernsey.

The DG’s functions¹ include inter alia, determining and prescribing the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties payable in the event of a default in the due payment of the fees or levies. The Telecommunications Law requires the DG to determine, prescribe and publish such fees².

Each telecommunications licence includes a condition that requires the licensee to pay the annual licence fee in the manner directed by the DG and specifies the interest payments due in the event of a failure to pay a fee.

3. Who is liable to pay the OUR’s Telecommunications Annual Licence Fees?

The Licence fees are payable by all persons and organisations granted licences in accordance with Part I of the Telecommunications (Bailiwick of Guernsey) Law, 2001 which includes all fixed and mobile telecommunications licences.

¹ Section 4(1)(d) of the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001

² Section 6 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

4. How is the Annual Licence Fee Calculated?

The Licence fee will be calculated by reference to a calendar year ending on the 31st December (the “licence fee year”).

The amount payable on an annual basis was set in 2002 at 1.0% of the relevant turnover of each licensee, and is payable in advance in four instalments, on 1 January, 1 April, 1 July and 1 October. In the case of licensees whose relevant turnover is less than £150,000, a flat rate fee of £500 is applied, again payable over four quarters.

In June 2004 the amount payable on an annual basis where the relevant turnover of the licensee is greater than £150,000 was revised as follows (see Document OUR 04/08 for further details):

2004: 1.6% of relevant turnover

2005: 1.5% of relevant turnover

2006 and subsequent years unless modified: 1.4% of relevant turnover

In 2004 on an exceptional basis the following payment schedule will apply:

1 January 2004: 0.25% of relevant turnover

1 April 2004: 0.25% of relevant turnover

1 July 2004: 0.25% of relevant turnover

15 August 2004: 0.25% of relevant turnover

1 October 2004: 0.25% of relevant turnover

15 November 2004: 0.35% of relevant turnover

For all other years the licence fee shall remain payable in advance in four instalments on 1 January, 1 April, 1 July and 1 October.

The amount is calculated based on the relevant turnover of the licensee in the financial year of the licensee that ends at any time during the year preceding the licence fee year. The calculation is based on the actual results as shown in the financial statements or, where the licensee is commencing operations, is based on estimated results.

Example 1: Licence Fee Year 2005. Telco Ltd. is an established network operator and had relevant turnover for its financial year 1 July 2003 to 30 June 2004 of £1.5m. The annual fee payable by Telco for the 2005 licence fee year will be 1.5% of this figure, which equals £22,500, payable in equal amounts in advance over four quarters.

Example 2: Licence Fee Year 2005. Netco Ltd. is a new service provider and estimates it will have relevant turnover for its financial year 1 September 2004 to 31 August 2005 of £0.1m. The company’s relevant turnover is below the threshold value of £150,000 and on an estimated basis it is therefore liable for the flat annual licence fee of £500, which is payable over four quarters.

When the results for the period are finalised it transpires that the actual relevant turnover was £200,000 and therefore Netco Ltd. is liable for an additional licence fee for the 2005 licence fee year of £2,500 payable immediately on submission of the annual return.

Licence Fee Year 2006. Netco had relevant turnover for its first financial year ending on 31 August 2005 of £200,000. The annual fee payable by Netco Ltd for the 2006 licence fee year will be 1.4% of this figure, which equals £2,800, payable in equal amounts in advance over four quarters.

In order to allow the OUR to calculate the annual licence fee, licensees are required to send the OUR a statement of relevant turnover certified by their auditors. The licensee's certified statement must be submitted to the OUR by 30th September. A sample certified statement is set out below for the guidance of licensees and their auditors.

Sample Certified Statement of Relevant Turnover

Le Page and Le Poidevin Auditors

Dear Director General

This statement is to certify the relevant turnover of Telco Ltd. for the OUR's licence fees payable for the year 1 January 2003 to 31 December 2003.

On 5 August 2002 we reported, as auditors of Telco Ltd., on the company's financial statements for the year ended 30 June 2002 to be laid before its annual general meeting.

The gross turnover as extracted from these financial statements is £1,500,000.

In our opinion the relevant turnover of Telco Ltd. amounts to £1,500,000 and has been properly extracted from the books and records of the company with which the audited financial statement are in agreement.

We enclose a copy of the audited financial statements.

Signed: *Le Page and Le Poidevin*

Date: 30th September 2002

[Important: In cases where the figure for relevant turnover differs from total turnover, precise details and the nature of the non-relevant turnover deducted from total turnover must be given. In the event of a failure to justify the exclusion of certain elements of turnover, the total turnover as set out in the financial statements may be used in the calculation of the licence fee.]

The OUR will notify licensees of their licence fees for the forthcoming licence fee year by 14th October of each year. If the licensee's certified statement has been submitted to the OUR, but the figure for the relevant turnover has not been accepted then the OUR will, on a provisional basis estimate the licence fee based on the licensee's full turnover as stated in its most recent statutory accounts. Once the

relevant turnover has been finalised the OUR will adjust future licence fees accordingly (see Section 5 below).

5. What happens if a licensee's relevant turnover is not available by 30th September?

As the licence fee is based on the licensee's relevant turnover in the licensee's accounts for the financial year which ends at any time during the year preceding the licence fee year it is possible that the appropriate relevant turnover figure may not be available to be certified by 30th September.

The Director General will therefore allow companies to pay their annual licence fee based on an estimate of the amount due, derived from an estimate of relevant turnover. In most cases the estimate to be used will be the relevant turnover from the previous licence fee year. However, the Licensee will be required to remedy the situation as soon as practicable.

In the case where a licensee pays the levy on the basis of an estimate, a reconciliation of the estimate and the actual amount due will be carried out as soon as a certified statement becomes available and is supplied to the OUR.

Example 3: Moco Ltd. is a licensee providing telecommunications services within the Bailiwick of Guernsey. Its financial year is 1 January to 31 December. Its relevant turnover for 2004 was £1.5m, its auditors have supplied the OUR with a certified statement of this, and the company has made a quarterly payment of £5,625 (25% of 1.5% of £1.5m) due on 1 October 2005 for the 2005 licence fee year.

The first two quarterly licence fee payments for the licence fee year 2006 are due from Moco on 1 January and 1 April 2006. As Moco's financial year does not finish until 31 December 2005, no figure for relevant turnover will be available. Based on its relevant turnover in the previous year Moco will pay an estimate of £5,250 (25% of 1.4% of relevant turnover of £1.5m) on both 1 January and 1 April 2006.

Before the 3rd quarter licence fee falls due on 1 July 2006 Moco's accounts for 2005 are finalised and a certified statement of relevant turnover of £2.0m is sent to OUR. Based on this figure, the OUR calculates the actual licence fee due from Moco for the 2003 licence fee year to be £28,000. Having paid a total of £10,500 in the previous six months Moco must pay the outstanding arrears of £3,500 immediately and make two further payments of £7,000 on 1st July and 1st October 2006.

6. What constitutes relevant turnover?

Relevant turnover is defined as the gross revenue (excluding value added tax paid to the provider of telecommunication services and networks in respect of such services where such tax is applied). As revenue generated from telecommunications services

forms the bulk of the revenue generated by most licensees, the OUR expects that relevant turnover for most licensees will not differ from total turnover.

Turnover generated by Licensees which is clearly not related to telecommunications services, may be deducted from total revenue. Examples of such revenue might be revenue generated from non-telecommunications related business, or generated from services carried out in their entirety outside the Bailiwick of Guernsey for clients outside the Bailiwick. For foreign resident licensees relevant turnover includes all revenue from telecommunications services generated by their operation within the Bailiwick.

Revenue generated by a licensee from other licensees for telecommunications services is relevant turnover and is not deductible. In particular revenue generated by licensees for telecommunications services supplied to subsidiaries or other connected undertakings of the licensee (whether or not the other party is also a licensee) is not deductible from relevant turnover.

If a company's relevant turnover differs from its total turnover precise details and the nature of any non-relevant turnover deducted from total turnover must be given in a statement certified by their auditors, as noted above in the sample statement. Such deductions from total turnover will be assessed on a case by case basis and in the event of a failure to justify the exclusion of certain elements of turnover, the Director General reserves the right to use total turnover as set out in the financial statements in the calculation of the licence fee.

7. What if a Licensee's relevant financial year is not 12 months?

In certain cases, particularly when a licensee has recently changed status, its financial year-end may change, resulting in a financial year that is either longer or shorter than 12 months. In such cases the OUR will use a pro-rata estimate of the most recent 12 months relevant turnover for calculating the licence fee due based on the audited certificate. Where required the provisions of section 4 will apply, i.e. where an estimate is necessary due to unavailability of data.

8. Procedures for quarterly payments of Licence Fee

The following procedures will be used, for the time being, for collection of the annual licence fee.

Licensees are responsible for ensuring that they make payment of the quarterly amount of the licence fee calculated on the basis of the relevant turnover on or before the due date. The OUR will issue an acknowledgement for fees received.

Once Licensees, who have already made payments on the basis of estimates, have supplied the OUR with a certificate of relevant turnover for their relevant financial year, the actual levy due will be reconciled with the estimates already paid, and

appropriate requests for payment will be made, or credit given, at the next payment date.

9. Automated Payments

Payments should be made to the OUR bank account, details of which will be provided directly to each Licensee. The name of the Licensee as it appears on the relevant Licence should be quoted in the payment.

10. Penalties

The requirement to pay OUR's annual licence fees is included in the licences of all of the OUR's telecommunications licensees. Therefore a failure to pay a fee will constitute a breach of licence. There are various remedies available to the Director General where there is a breach of licence and without prejudice to those remedies, or any other remedies under the Licence or the Laws, if the Licensee fails to pay any amount due by the due date, the Licence Conditions include a requirement that the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published base rate of the Bank of England.

11. Rebate of Excess Fees and Collection of Shortfalls

In document OUR 01/11 the Director General decided that in the event that the OUR collected licence fees that are greater than the amount needed to carry out the relevant functions assigned by Law, the Director General would refund the excess fees to licensees. Following the response to the Fees for Telecommunications Consultation Paper³ this practice will be continued in the telecoms sector. As a matter of expediency, the Director General reserves the right to make rebates by means of a reduction in the amount of the annual licence fee payable for subsequent years or by offset against other amounts owed by licensees.

Similarly should there be any shortfall, the Director General may make up this shortfall using one or more of a number of options including:

- imposing an additional fee or levy on the licensees within the calendar year in which the shortfall arises; or
- obtaining short term funding and increasing licence fee or levy in the following calendar year; or
- seeking loans or grants from the States in accordance with section 10 of the Regulation Law if appropriate.

The mechanism to be used will depend on the nature and size of any shortfall and will be decided on a case by case basis.

In 2004 a shortfall in licence fees was identified and the treatment of this shortfall is described in Document OUR 04/08.

/ENDS

³ OUR Document 02/31