



Office of Utility Regulation

**Proposed Decisions under
The Telecommunications (Bailiwick of
Guernsey) Law, 2001**

Proposed Application of the Code
to Wave Telecom Ltd

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Consultation Paper

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1. Introduction

The Telecommunications (Bailiwick of Guernsey) Law 2001 (the Telecoms Law) makes provision for the Director General (DG) to include a condition in any licence granted to an operator of a telecommunications network to allow them have access to and use of land to facilitate the establishment and operation of a telecoms network. The Code, which sets out the rights, powers, duties and obligations of a licensee to which the code is applied is detailed in Schedule 1 of the Telecoms Law. Section 9 of the Telecoms Law sets out the details of the process to be followed in order to allow an operator have access to the Code.

In April 2003, the DG awarded 2 mobile licences to Wave Telecom Ltd (Wave Telecom); one for its 3G Mobile telecommunications network and services and one for its 2G Mobile Telecommunications network and services. Included in those licences was the text of a condition relating to the Code. This had been included as it was envisaged that any successful applicant would require such rights and also to ensure that the licensee had, as far as was practicable, similar rights, entitlements and obligations as the existing mobile operator, Cable & Wireless Guernsey (C&WG).

C&WG was awarded its mobile licence in October 2001. Prior to the award of that licence the DG undertook a consultation to consider whether to include a condition in its licence to enable it to use the Code¹. Following that consultation, the DG confirmed that she would be including a condition in the C&WG licence². This condition is Condition 19 in the C&WG mobile licence³.

In May 2002, the OUR consulted on the general text of the mobile licences that would be awarded to any successful applicant for the mobile licences to be awarded⁴. Among those conditions was a condition relating to the Code which was reproduced in the actual licences awarded. Following this consultation, the DG confirmed the conditions that she proposed to include in the licence that was subsequently awarded to Wave Telecom⁵. However under Section 9 of the Telecoms Law, the DG is required prior to including a condition on the Code, to publish notice of her intention to include such a condition in its licences. Although the condition in the licences relating to the Code was included in the previous consultation, the Director General wishes to consult on this matter specifically. She wishes to consider, in light of developments in the market since the award of the licence to Wave Telecom, whether this condition should be retained in the licence issued to Wave Telecom.

¹ OUR 01/04: Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001 Consultation Paper

² OUR 01/14: Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001 Decision Notice and Report on the Consultation

³ http://www.regutil.gg/docs/guernsey_telecoms_mobile_licence.doc

⁴ OUR 02/18 Mobile Telecommunications Licence Terms and Conditions Consultation Paper

⁵ OUR 02/2: Competition for Mobile Telecommunications Licences Response to Consultation, Call for Expressions of Interest, and Call for Comments on Preliminary Tender Document

This consultative document does not constitute legal, commercial or technical advice. The Director General is not bound by it. The consultation is without prejudice to the legal position of the Director General or her rights and duties to regulate the market generally.

2. Consultation Procedure and Timetable

The consultation period will run from Friday 14th November to Monday 24th November 2003. Written comments should be submitted before 5.00pm on November 24th to:

Office of Utility Regulation
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001 - Consultation Paper”

In line with the policy set out in Document OUR01/01 – “Regulation in Guernsey; the OUR Approach and Consultation Procedures”, the Director General intends to make responses to the consultation available for inspection. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential.

The Director General regrets that she is not in a position to respond individually to the responses to this consultation, but she proposes to issue a response to the consultation, including published licence terms and conditions in September.

3. Proposed decision to Apply the Code in Schedule 1 of the Telecoms Law

Section 9 of the Telecoms Law requires the Director General to publish notice of her intention to apply the Code, as set out in Schedule 1 of the Telecommunications Law. The Code sets out certain rights, powers, duties and obligations that are applicable to the licensee in relation to access to land. As was stated above, two licences containing a condition relating to the application of the Code have already been issued to Wave Telecom.

The Director General may apply the Code where in her opinion it is not technically or economically feasible for the telecommunications network of that licensee to be

established, operated or maintained without the Code. The rights in the Code are designed to ensure that operators with requirements to provide Bailiwick wide telecommunications networks are capable of meeting those obligations. In addition, notwithstanding the application of the Code, the licensee is still subject to the planning laws of the Bailiwick.

The DG considers it reasonable to expect that Wave Telecom will require the rights in the code to continue to establish, maintain and improve its network. Wave Telecom under the licences issued to it by the OUR, is required to roll-out its own mobile network in the Bailiwick. While the DG encourages network sharing where feasible, she recognises that because Wave Telecom is constructing both a 3G and a 2G network, it may require additional sites to those currently utilised by existing utilities. This is because the characteristics of 3G spectrum are such that more masts are required to cover the same area than would be required using 2G spectrum and the location of those masts may not necessarily be catered for. The DG therefore proposes that the Code be applied to Wave Telecom.

4. Section 9 of the Telecoms Law

Under Section 9(4) of the Telecoms Law the DG is required to consult publicly before including a condition in a licence allowing the application of the Code. In this case the licence has been awarded to Wave Telecom and a consultation was carried out prior to the award of the licence. Specific attention was not drawn to the inclusion of the application of the Code in the licences. For the avoidance of doubt the DG is again consulting on this issue. Therefore she now invites comments on whether interested parties believe it is appropriate that Wave Telecom's mobile licences include a condition that allows it to have the Code apply to it. The DG will consider fully all comments received and will publish notice of her decision

5. Conclusion

The DG will publish her decision on this matter as soon as is practicable after the consultation period and will undertake any further actions as are needed that result from the outcome to this consultation.