



Telecom licence fees

T1605G

Call for Information

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GUERNSEY COMPETITION AND REGULATORY AUTHORITY

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Summary

- 1.1 Licence fees are charged by the Guernsey Competition and Regulatory Authority (**GCRA**) to licensed telecommunication providers in Guernsey to meet the costs of regulating the telecoms industry. Information Notes are issued by the GCRA from time to time informing stakeholders of the process and principles that are applied when setting those charges. This document is a Call for Information proposing to revise certain aspects of the Information Note.
- 1.2 Following the reversion to separate Guernsey and Jersey authorities there is a need to update the current Information Note so it is Guernsey specific. In addition, there are aspects of the current framework where improvements seem appropriate, with two specific changes under consideration and these are summarised in the text box below.

Summary of proposed changes to mechanism for setting licence fees

- *The GCRA proposes to increase the minimum level of licence fee for all spectrum holders to £16,500 per annum.*
- *In addition to the accrual of interest charges for late payment, the GCRA is considering invoicing Licensees for the cost of pursuing late payment at a daily rate of £450 for internal time spent in the recovery of late payment of licence fees.*

- 1.3 Responses from interested parties should be provided by **4pm on 22 March 2022**.

Background

- 1.4 The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (**the Regulation Law**) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (**the Guernsey Telecoms Law**), together empower the GCRA to regulate the telecoms market in the Bailiwick of Guernsey. The GCRA's legal powers include, among others, determining, prescribing and publishing the fees and levies payable on an application for, and on the grant and renewal of, and over the term of a licence, and the interest and penalties payable in the event of a default in the due payment of the fees¹. GCRA is also required to publish details of the total fees charged, which meet the costs of exercising its functions and powers in the regulation of the telecommunications market, over the term of the licence. The GCRA is required to establish a fund known as the "Public Utilities Regulation Fund" into which licence fees shall be paid, to maintain proper accounting records, to have the accounts independently audited and to submit the audited accounts along with its annual report to the States.

Current Licence Fee Arrangements in Guernsey

- 1.5 The current Information Note published in July 2013 set out the process and principles applied² summarised in the text box below.

¹ In accordance with section 4(1)(d) of the Regulation Law and section 6 of the Guernsey Telecoms Law

² <https://www.gcra.gg/cases/2013/t1001gj-telecoms-licence-annual-fees/t1001gj-telecoms-licence-annual-fees-information-note/>

Existing mechanism for setting licence fees

- GCRA applies two principles; namely that licence fees will be payable by all those granted a telecoms licence and that the licence fee will be calculated with regard to the GCRA's financial year.
- GCRA apportions the costs of regulation across all telecommunication licensees by setting annual licence fees on a percentage of relevant turnover basis.
- The definition of Relevant Turnover is the gross revenue paid to the licensees in respect of all telecommunications services for which a telecoms licence is required, subject to exclusions.
- Specific sources of turnover are excluded from total revenue to calculate Relevant Turnover.
- Licensees are required to provide a set of financial statements together with a certified statement of Relevant Turnover signed by two directors of the licensed entity in a prescribed format.
- Calculations of Relevant Turnover are based on the financial year of the licensee that ends at any time up to 30 June during the year preceding the licence fee year.
- All Licensees paying the minimum proposed fee will be invoiced on or before 1 December each year with all other licensees paying by monthly standing order, on the first day of the month, with the amount confirmed on or before 1 December each year.
- If the Licensee fails to pay any amount 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 calculated at a rate as specified in the licence.
- All Licensees pay licence fees based on a percentage of Relevant Turnover subject to a minimum of £500 per annum.
- Excess licence fees will be refunded to Licensees in the same proportion as originally paid by Licensees in the given year.
- In situations where additional licence fees are required and where the amount is less than or equal to 10% of the telecoms licence fee income for the year then additional licence fees would be invoiced in that year, with the GCRA endeavouring to secure short term funding for amounts greater than 10%.

- 1.6 Whilst the GCRA wished to encourage appropriate liberalisation of the market and ensure that barriers to entry do not constrain new entrants, it nevertheless considered it important for annual licence fees to be borne by all licensees on the basis of fair and reasonable principle. The method it considered would most easily achieve this was through the application of a simple percentage rate to relevant turnover together with a minimum fee. The GCRA was of the view that the mechanism adopted should relate the fee paid, to activity and size of operators in the market, using turnover as a proxy. The current approach is therefore to set annual licence fees for telecoms licensees based on a simple percentage of relevant income/turnover.
- 1.7 In deriving relevant turnover, the GCRA considered that the following sources of turnover should be exempted (by virtue of the fact that no telecoms licensee is required to provide these services) and therefore deducted from total revenue to calculate Relevant Turnover:
 - Spectrum usage charge (Guernsey)
 - Non-telecoms related business
 - Services carried out in their entirety outside

the islands' legal jurisdiction • Data Centre Hosting and services (although not connectivity services provided to data centre customers) • Mobile handsets and accessories • Consultancy • Sales of customer premises equipment (CPE) & customer wiring • Managed services • Call Centre Services. The GCRA recognised that both the telecoms market and licensees' businesses are continually evolving and that it may therefore be necessary to periodically revisit the definition to ensure that it remains appropriate. The definition of Regulated Turnover is the gross revenue paid to the licensees in respect of all telecommunications services for which a telecoms licence is required, subject to the exclusions listed above.

- 1.8 Licensees are required to provide a set of financial statements together with a certified statement of Regulated Turnover signed by two directors of the licensed entity in a prescribed format (See **Appendix A**).
- 1.9 The Relevant Turnover is based on the financial year of the licensee that ends at any time up to 30 June during the year preceding the licence fee year, with the most recent certified statement used in cases where Relevant Turnover is not available by 31 October and pro-rata estimates used in cases where Licensee's accounting periods are not 12 months.
- 1.10 Where a licensee is obliged to pay the minimum licence fee, they are invoiced on or before 1 December each year with all other licensees paying by monthly standing order, on the first day of the month, with the amount confirmed on or before 1 December each year.
- 1.11 Failure to pay all or part of the licence fees due constitutes a breach of licence. There are various remedies available to the GCRA where there is such a breach of licence. Without prejudice to those remedies, or any other remedies under the Licence or Laws, if the Licensee fails to pay any amount 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 calculated at a rate specified in the licence. The laws provide that licence fees are a debt owing to the GCRA and can be collected through debt proceedings in court.
- 1.12 Having applied the charging percentage to a Licensee's Relevant Turnover, if the resultant annual licence fee would be less than £500, then the minimum licence fee of £500 per annum is chargeable.
- 1.13 In the event the GCRA collects licence fees that are greater than the amount needed to carry out the relevant functions by Law, it would refund the excess to Licensees in the same proportion as originally paid by Licensees in the given year. The GCRA does not however generally refund all excess Licence fees in a given year; in order to provide a degree of predictability for the level of the licence fee the GCRA maintains a cash reserve to offset fluctuations in the cost of regulation from year to year. Over 2022 for example it expects that it will draw significantly from its telecoms reserves and has chosen to do so rather than increase the licence fee percentage for the year.
- 1.14 In situations where additional licence fees are required and where the amount is less than or equal to 10% of the telecoms licence fee income for the year then additional licence fees are invoiced in that year. The GCRA endeavoured to secure short term funding for amounts greater than 10%.

Proposed changes to Licence Fee Arrangements in Guernsey

Spectrum holder minimum licence fee

- 1.15 One of the GCRA workstreams in the telecoms sector is to “*Support States policy regarding future spectrum awards and a States’ telecoms security framework in support of next generation mobile and establish the appropriate regulatory framework to deliver that*”. This workstreams is likely to extend over the coming years. Consideration of the provision of next generation mobile is likely to also overlap with the review of broadband, with existing spectrum holders expected to fully participate and benefit from the regulatory work entailed by both workstreams.
- 1.16 However, under the present licence fee framework, the annual fee paid by three of the licensed Guernsey spectrum holders is based on a percentage of Relevant Turnover, whereas the fourth spectrum holder pays a considerably lower amount of £500, which is the minimum amount for low or zero regulatory turnover licensees. There is therefore a significant discrepancy between the contribution to cost by the four spectrum holding licensees. In these circumstances the principle that annual licence fees might be borne proportionately by all licensees which is best and most easily achieved through the application of a simple percentage rate, does not appear to produce a fair outcome. While there is always likely to be a divergence between the licence fee paid by the largest and smallest licence holders the low amount paid by one spectrum holder results in a large divergence that has continued since 2009, while holding a significant Guernsey asset in the form of spectrum. The suggestion that all existing licensed spectrum holders should contribute a higher minimum amount to the costs of a spectrum regulatory workstream appears even more persuasive when such a large divergence exists and remained the case since 2009.
- 1.17 Alternatives to address this are under consideration³ where a fairer apportionment of regulatory costs of the workstream might be based on:
- Spectrum awarded
 - Direct cost of relevant regulatory workstream
 - Fully allocated cost of relevant regulatory workstream
- 1.18 When considering whether the volume of spectrum held is a basis for apportionment of costs of a spectrum regulatory workstream, it is relevant that spectrum in different band widths have considerably different technical properties and commercial value. The supply versus demand for spectrum and the regulatory costs associated with such awards can also vary materially. The above factors are likely to continue to be relevant into the next round of spectrum awards. Given these issues, while the calculation is more transparent and straightforward there are reservations about using total spectrum awarded as a criterion to reallocate licence fee costs for spectrum specific work streams.
- 1.19 The second alternative assumes that the benefit from a future regulatory workstream considering new spectrum awards is largely confined to existing spectrum holders. New bidders for spectrum may be less likely to enter the Guernsey market given there are already four spectrum holders

³ These include prorating the cost of relevant GCRA workstreams on the basis of the amount of spectrum held by each of the four licensees, require the fourth spectrum holder to increase its licence fee to meet the fully allocated budgeted costs of relevant workstreams or require the fourth spectrum holder to increase its licence fee to meet the direct costs of relevant workstreams.

present and if there were new bidders it is in any event not possible to identify those parties in advance.

- 1.20 The third alternative contemplates a significantly larger minimum licence fee by including a contribution to regulatory overhead costs. An argument against this position is that overhead costs the GCRA incurs are (at least in the medium term) unrelated to whether a licensee holds spectrum or whether a spectrum workstream takes place. This is not entirely accurate and while there is some merit to an argument that minimum licence fee payers should make some contribution to regulatory overhead costs, the GCRA is not convinced that this would be the most proportionate approach. A fully allocated cost recovery approach (i.e. one that includes both direct costs and overheads of the spectrum workstream) would in its initial view seem disproportionate in these circumstances.
- 1.21 The GCRA therefore proposes to modify the current Information Note to raise the minimum amount of the licence fee for licensees that hold Guernsey spectrum only, in order to contribute an equal share of the direct costs of the spectrum regulatory workstream. On the basis of the direct costs of the spectrum workstream for 2022, this would equate to £16,500 per annum. The cost to other licensees holding spectrum would be reduced proportionately, as this is not a measure intended to increase licence fees overall.

Question 1: Do you agree with the GCRA's proposal to set a minimum licence fee of £16,500 per annum for existing spectrum holders?

- 1.22 *Late licence fee payers* - The GCRA has a number of licensees that pay the minimum fee of £500. This represents a small amount of income where cost recovery of the amount owed needs to be low. Most licensees pay their fees on time. Unfortunately, there are licensees with a long history of not paying their licence fee or only paying after multiple follow ups extending over long periods of time. This is not an efficient use of licence fees which other licensees who do pay promptly are effectively cross subsidising since the cost of time expended recovering these amounts are not covered by the minimum licence fee.

- 1.23 The option of applying an interest fee to the outstanding licence fee does not appear to be a sufficient deterrent and in any event, recovery suffers from similar issues given the level of the minimum fee itself. The GCRA is therefore expending unnecessary time and resources recovering these fees, in a small number of cases, and wishes to address this persistent issue. To address this definitively the GCRA proposes to impose a minimum daily charge of £450 which represent a reasonable estimate of the direct cost it accrues pursuing outstanding licence fees which, in addition to the licence fee, will be recoverable from petty debts.

Question 2: Do you agree with the GCRA's proposal to set a debt recovery charge of £450 per day for time spent in recovering outstanding licence fees?

Consultation

1.1 The GCRA invites interested parties to submit responses to the proposed decision by **4pm on 22 March 2022.**

1.2 All written comments should be clearly marked '*Telecom licence fees – Call for Information 2022*' and should be delivered by hand or by e-mail to the following address:

GCRA
Suite 4, 1st Floor
La Plaiderie Chambers
La Plaiderie
St Peter Port
Guernsey
GY1 1WG

E-mail: info@gcra.gg

1.3 In line with the GCRA's consultation policy, it intends to make comments on the Call for Information available on its website. Any material that is confidential should be put in a separate annex and clearly marked as such, in order that it may be kept confidential.

Appendix A – Prescribed format for financial statements and certified statement of Relevant Turnover

Licensee Name _____

Certified Statement of Relevant Turnover for the year ending <xx>

Turnover per Financial Statements	£x
Non-telecoms related business	(£x)
Services carried out entirely outside the Bailiwick	(£x)
Data centre hosting and services	(£x)
Mobile handsets and accessories	(£x)
Consultancy	(£x)
Sales of CPE and customer wiring	(£x)
Managed services	(£x)
Call Centre Services	(£x)
Other deduction 1	(£x)
Other deduction 2	(£x)
Relevant Turnover	£x

Explanation of Deductions

Deduction 1	Nature and explanation for the deduction
Deduction 2	Nature and explanation for the deduction

Declaration

This statement is to certify the Relevant Turnover of <enter licensee name> for the purposes of calculating telecoms licence fees for the GCRA for the year ending 31 December <enter year>.

In our opinion the Relevant Turnover of <enter licensee name> amounts to <enter amount>, has been properly extracted from the books and records of the licensee (including the financial statements), and complies with the guidance issued by the GCRA.

We enclose a copy of the financial statements.

Signed Director 1

Name

Date

Signed Director 2

Name

Date

END/