

Mr J Curran
Director General
Office of Utility Regulation
Suites B1 & B2
Hirzel Court
St Peter Port
Guernsey
GY1 2NH

30 August 2007

Dear John

Representations re proposal to modify the licence of Mobile Operators

Cable and Wireless Guernsey Limited (C&W Guernsey) is grateful for the opportunity to comment on the proposals to modify the licence of mobile operators contained in OUR 07/11¹. These comments should be considered alongside our response to OUR 07/10², which is submitted in a separate letter.

1. Environment Department Requirement for Planning Applications

C&W Guernsey is actively involved in discussions with the Environment Department, and other licensed operators on agreeing the code of practice referred to on page 1 of OUR 07/11. C&W Guernsey also notes and understands that the Environment Department has adopted an approach, which aims to minimise the need for new greenfield mast development. That approach requires Guernsey Airtel (GAL) to negotiate with an existing operator to share or redevelop that operator's existing masts for both operators to use.

However we do not understand or interpret the Environment Department's approach to have what is described as "the practical effect" as set out on page 2 of OUR 07/11:

- *'Relate to a structure which is/will be constructed so as to be capable of carrying the equipment of the new applicant and the equipment of the other operator currently operating on a nearby site, and which is not significantly higher than the existing mast on the nearby site;*
- *Be a joint application from the operator seeking approval for a new mast and the operator with the mast on a nearby sites; and*
- *Be made in a context whereby the operator currently operating on a mast near the site where the proposed mast will be erected agrees to move to the new site and to dismantle its own infrastructure.'*

In particular C&W Guernsey neither understands nor agrees that the intended outcome of any planning application for a structure which is "near an existing structure" is that in all circumstances the existing structure must be dismantled. This would be an inappropriate

¹ Amendment to Mobile Licences of C&W Guernsey, Guernsey Airtel Ltd and Wave Telecom – August 2007

² Amendment to Guernsey Airtel Ltd's 2G and 3G Mobile Licences – August 2007

and bizarre outcome. Rather, and as has been confirmed by the Environment Department, the requirement applies solely to monopoles, and not to other types of structure.

In respect of the proposed changes to licence conditions C&W Guernsey has the following observations and concerns:

- a) We had understood that all planning applications for monopoles that have been approved are subject to them being capable of being shared by another operator. Hence there should be very few structures to which the proposed process applies.
- b) If the requirements were to apply to other structures as well as monopoles, then the appropriate and simplest solution to any suggestion of erecting a new structure alongside an existing one, is to strengthen or directly replace the existing structure. Even so, and as the Director General acknowledges³, there are technical, operational and commercial issues, which would apply even where the operators were to share the existing structure but would be more extensive if a second (replacement) structure is to be erected. For example:
 - i. The availability of a second suitable site in the same location;
 - ii. Either gaining permission from the existing site owner for more disruption on the property, or gaining permission from a new site owner for disruption to his property as well as to that of the existing site owner;
 - iii. Public reaction to planning applications. The proposal may overcome environmental issues, but it does not address health concerns;
 - iv. Who pays for the erection of the new structure and base station housing;
 - v. Who pays for the moving of existing equipment to the new site? This includes leased lines to the site;
 - vi. How is the existing operator(s) compensated for downtime while equipment is being moved;
 - vii. How is the existing operator(s) compensated for the investment made in the existing structure and site?
 - viii. What is the impact on customer service? It is not in the interest of customers to suffer poor quality service while the work is being done, especially with their reliance on indoor cover for data;
 - ix. In what order are the antennae erected on the new structure. Existing operators will not expect to have worse coverage as a result of the move;
 - x. How can a new structure that is 'not significantly higher'⁴ than the existing mast accommodate the antennae of a second or third operator;
 - xi. Is each operator a tenant of the site owner? Who pays rent to whom? Current mast sharing arrangements are well understood by all parties. If the existing mast is strengthened the commercial arrangements remain almost unchanged.
 - xii. Current contract terms and conditions with site owners may not allow for early termination.
 - xiii. What is the benefit to existing mobile users?

2. Revised Licence Conditions

Condition 20.1 - C&W Guernsey welcomes the confirmation from the Director General that mast sharing should continue to be based on commercial negotiations between the operators. We accept that the change requiring operators to seek to reach agreement

³ OUR 07/11, page 2.

⁴ OUR 07/11, page 2.

within 30 days, rather than the current sixty days, in Condition 20.1 is reasonable. However, given the issues listed above it is highly unlikely that they will all be resolved within 30 days, so any agreement will be in principle only.

Condition 20.2 – Operators are required to share Telecommunications Equipment and Associated Facilities such as housing, masts, electricity supply etc. We note that this Condition is already in the Licence of other mobile operators.

- Telecommunications Equipment is defined in section 31 of the Telecommunications (Bailiwick of Guernsey) Law 2001 (the 'Law') as: *'...equipment designed, constructed or adapted for use in connection with the establishment or operation of a telecommunications network or the provision of a telecommunications service, including telecommunications apparatus, poles, structure, ducts, man-holes and other tangible property.'* The definition in the Law of Telecommunications Apparatus includes *'(a) wire used for the purpose of telecommunications services together with any casing, coating, tube or pipe enclosing it and any telecommunications apparatus connected to it for the purpose of telecommunications; and (b) any apparatus used for transmitting messages or other communications by means of electric signals.'* It cannot be possible that the OUR meant 'sharing' to encompass Telecommunications Equipment to that extent, **hence we propose that the defined term 'Telecommunications Equipment' should be omitted from the Licence Condition.**
- Associated Facilities is defined in section 31 of the Law as *'...those descriptions or classes of telecommunications equipment which are designated as associated facilities by the Director General from time to time.'* **If the defined term 'Associated Facilities' is to be used in Condition 20.2 it should be made clear what Telecommunications Equipment is designated by the Director General for the purposes of Condition 20.**

Condition 20.3 – The proposed wording includes *'...if such agreement cannot be reached within times to be stipulated by the Director General...'* and *'...the Director General may direct the terms on which such sharing shall occur.'* We cannot provide meaningful comment on this broad Licence Condition until we know what the *'times to be stipulated'* are and what *'the terms of such sharing'* are likely to be. **When will those times be made available to operators and what opportunity will we have to contribute to the setting of the times? The terms of sharing must take account of the issues raised above and in particular as to the existing height of antennae, coverage afforded, loss of service etc.**

Condition 20.4 – The proposed wording should include *'...use best endeavours to reach agreement for sharing the use of any facility...'*

Condition 20.5 - Agreed

3. Summary

It is the view of C&W Guernsey that the proposal put forward by the Environmental Planning Department is not to be interpreted as requiring that a second mast should be erected and the original mast dismantled. The requirement should be explicitly limited to monopoles that are not capable of being shared. For the reasons set out any such proposal would in any event be extremely difficult to put into practice due to the many associated issues, as listed above.

The draft Licence Conditions proposed by the OUR should be reconsidered in the light of our comments. In the case of Condition 20.2 the use of defined terms makes it more far

reaching than we believe was intended. On the other hand Licence Condition 20.3 is so lacking in specific detail we are unable to comment other than to say it is unacceptable in its current form. We also suggest that the wording of all the Licence Conditions should be checked as there is currently an inconsistent use of capital letters to denote defined terms.

Kind regards

JANE LANGLOIS
Regulatory Adviser