



Office of Utility Regulation

# **Amendment to Wave Telecom's 2G Mobile Licence**

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## **Statutory Notification**

Notice of Modification of the Licence for 2G Mobile Telecommunications Networks and Services issued to Wave Telecom Ltd under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

**Document No:** OUR 05/29

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# 1 Introduction

Document OUR 05/25 gave notice<sup>1</sup> of the Director General's intention to modify the Licence issued to Wave Telecom Limited ("Wave") on 25<sup>th</sup> March, 2003 under section 8(1) of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The proposed modification to the licence entailed the replacement of the existing definition of "Licensed 2G Mobile Telecommunications" to reflect a change in the spectrum to be used by the company.

Wave was awarded a licence for 2G telecommunications networks and services in March 2003 following an open competitive selection process. The process was launched in August 2002 when an Information Memorandum (OUR Document 02/30<sup>2</sup>) was published which set out the terms of the mobile competition and details of the licences and the spectrum that would be allocated to the successful applicant.

OUR 02/30 made provision for alternative spectrum being made available to the successful applicant at a future point. Section 5.2 stated, inter alia, that:

*"If a successful applicant wishes to use alternative frequency bands to provide a 2G service then the Director General will consider this after the conclusion of this competition. Unused 2G spectrum is available in Guernsey in the E-GSM band, whereas frequencies in the P-GSM band may only be made available if vacated by the current user, Guernsey Telecoms Ltd."*

Wave has made an application to use E-GSM spectrum as provided for under the terms of the mobile licence competition. It is required to surrender DCS1800 spectrum to ensure that there continues to be efficient use of spectrum by licensed operators. In order that Wave can now take advantage of the terms of the 2002 mobile competition, the Director General proposed to amend Wave's licence to include spectrum in the E-GSM frequency (900MHz band) in the definition of Licensed 2G Mobile Telecommunications Services.

The surrendered DCS1800 spectrum will be made available as part of the new mobile licence competition which will shortly commence for the award of a further 3G mobile licence. In Document OUR 05/25 the DG requested interested parties to provide written representations and objections by 23<sup>rd</sup> November 2005.

The Director General received one response to the statutory invitation to comment with a formal submission from Cable & Wireless Guernsey ("C&WG"). The Director General wishes to thank C&WG for its response. In line with OUR standard practice, with the exception of any responses marked as confidential, written comments are available for inspection at the OUR's office and are also published on the OUR's website [www.regutil.gg](http://www.regutil.gg).

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<sup>1</sup> Amendment to Wave Telecom's 2G Mobile Licence Statutory Invitation to Comment Notice of Proposal to Modify the Licence for 2G Mobile Telecommunications Networks and Services issued to Wave Telecom Ltd under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001

<sup>2</sup> Competition for Mobile Telecommunications Licences. Information Memorandum

This paper is structured as follows:

**Section 2** presents the responses that were received from interested parties and, in light of consideration of those comments, the Director General's position on the proposed licence modification; and

**Annex 1** contains the notice of the modification to Wave Telecom Limited's Licence.

## **2 Consideration of Responses**

Copies of the respondent's written representations and objections to the statutory invitation to comment are available from the OUR and on the OUR's website ([www.regutil.gg](http://www.regutil.gg)). This section summarises the key points raised by the respondent and the Director General's response to those comments.

### **2.1 Respondent's Views**

C&WG make a number of points in relation to the proposed licence modification.

In the first instance C&WG state that the OUR has not provided any information as to why Wave consider it necessary to use EGSM spectrum. In C&WG's view the allocation of new spectrum is unnecessary and Wave should continue to use the DCS1800 2G spectrum.

CW&G also maintain that the process is flawed and that the OUR has changed the processes it has adopted in awarding spectrum in Guernsey. C&WG believe that Wave seem to have been awarded the spectrum by Ofcom and OUR prior to there being any public consultation on the process and without C&WG, or any other potential licensed operator, having an opportunity to provide reasons as to why it should be allocated such spectrum as well.

In addition C&WG consider that the DG's discretion as to whether the licence is amended has been fettered by the prior award of the spectrum by Ofcom.

Finally C&WG express concerns with the consistency of the approach that Ofcom is adopting in relation to spectrum efficiency management. C&WG believe that Ofcom's and the OUR's approach to spectrum allocation appears inconsistent with the position in Jersey.

### **2.2 Director General's Response**

This section sets out the Director General's position in relation to the arguments made by C&WG.

The licence granted to Wave already permits it to operate the Network and Services outlined and this amendment merely permits it to carry on these operations on the spectrum awarded it by Ofcom. Ofcom is satisfied that the award of this spectrum, coupled with the surrender of DCS1800 spectrum is appropriate.

In any event the DG maintains that Wave were entitled to apply to Ofcom for the spectrum as this possibility was outlined in the Tender Documentation for the Mobile Telecommunications competition in 2002. Wave's reasons for its proposed use of the available EGSM spectrum is a commercially confidential matter for the company and does not, in the DG's view, impact upon his consideration of the proposed amendment to its licence.

Wave will be required to surrender DCS1800 spectrum in exchange for the allocation of EGSM spectrum and the details of this have been agreed with this Office and with Ofcom so as to ensure that no licensee is 'hoarding' spectrum that is not required by

it. Essentially it is a direct swap in terms of the amount of spectrum being awarded in E-GSM spectrum for that being returned in the DCS1800 spectrum. The available spectrum will be included in the new mobile competition (based on a demonstrable need for the spectrum), the proposed terms of which have already been communicated to the market.

The DG rejects CW&G's assertion that the process is flawed and that the OUR has changed the processes it has adopted in awarding spectrum in Guernsey. The DG maintains that the spectrum in question was clearly and specifically earmarked as available to a successful applicant in the competition in 2002. Wave was the only application that would have been considered for the 2G spectrum allocation as there was no other applicant for the 3G licence in 2003 and associated 2G spectrum. The DG regards this as transparent, reasonable and fair and the spectrum has been awarded in accordance with the terms of the licence competition and this basis has been made public.

The DG does not accept that his discretion has been fettered by the award of spectrum by Ofcom. In the event of interested parties providing justifiable reasons as to why the licence modification should not be implemented the DG would be required to consider that information. In this event he is not convinced by C&WG's arguments and it has provided no justifiable reasons as to why this licence amendment should not take place.

The DG is aware of the procedures adopted in Jersey but believes that these are not matters of relevance for the Bailiwick of Guernsey. Jersey is a different jurisdiction. The OUR will be working with Ofcom over the coming 12 months in performing an efficiency audit of spectrum usage within the Bailiwick. The DG understands that this will also be carried out in Jersey at the same time.

### **2.3 Conclusion**

In conclusion, C&WG has not provided any objections or representations that lead the DG to the view that the licence amendment should not proceed. The DG will therefore proceed to implement the proposal to modify Wave Telecom's licence as described in Annex 1 to this document.

## Annex 1            Notice of Modification of Licence

On 11<sup>th</sup> November 2005 the Director General published notice of his intention to modify the licence of Wave Telecom Ltd, in accordance with;

- Section 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001; and
- Condition 6 of the Licence issued to Wave Telecom Ltd under Part 1, Section 1 of the Telecommunications (Bailiwick of Guernsey) Law, 2001,

The notice was published in Document OUR 05/22 on the OUR website and a notice was also placed in the Gazette Officielle inviting comments on the proposal in accordance with section 8(2)(c) of the Telecommunications (Bailiwick of Guernsey) Law, 2001. The Director General has considered all written representations and objections to the proposed licence modification.

Having followed the procedure set out in subsection 8 of the Telecommunications (Bailiwick of Guernsey) Law, 2001, the Director General hereby gives notice of the following modification of the Licence issued to Wave Telecom Ltd under Section 8(1) of the Telecommunications (Bailiwick of Guernsey) Law 2001 as follows:

The following condition of the Licence is hereby deleted:

*“Licensed 2G Mobile Telecommunications Services”*: means services (other than satellite services) the provision of which consists, wholly or partly, in the establishment of radio communications to Users, which makes use wholly or partly of a Licensed 2G Mobile Telecommunications Network and which has the characteristic of a pan-European, cellular, digital, land based, mobile telephony service compatible with the GSM standard. These services shall be provided in the 1800MHz band in accordance with the Wireless Telegraphy Act and the ETSI technical specifications;

and replaced with the following:

*“Licensed 2G Mobile Telecommunications Services”*: means services (other than satellite services) the provision of which consists, wholly or partly, in the establishment of radio communications to Users, which makes use wholly or partly of a Licensed 2G Mobile Telecommunications Network and which has the characteristic of a pan-European, cellular, digital, land based, mobile telephony service compatible with the GSM standard. These services shall be provided in the 1800MHz band and 900MHz band in accordance with the Wireless Telegraphy Act and the ETSI technical specifications;

The reason for this modification is in response to an application from Wave Telecom Ltd to use E-GSM spectrum as provided for under the terms of the mobile licence competition in 2002. As a result of the licence modification Wave Telecom Ltd is required to surrender DCS1800 spectrum to ensure that there continues to be efficient use of spectrum by licensed operators.

This modification takes effect from the date of publication of this notice, which is Thursday 1 December 2005.