Newtel Solutions

27 August 2004

Office of Utility Regulation
Hirzel Court
St Peter Port
Guernsey GY1 2NH

Dear Sirs

Re: Price Control for Telecommunications Services in Guernsey – Price Control Scope and Structure - Consultation Document No: OUR 04/10

We refer to the above consultation document and we align in broad terms with much of the OUR's analysis contained in Sections 4 to 6 of the Consultation Document.

However, before providing responses to the questions posed in the document, we would like to reiterate some general points in relation to price controls that we made in our response to the OUR Consultation Paper OUR 01/22.

In essence, we take the view that the results of price controls are uncertain. For example, since 1984, the regulator in the UK has applied RPI-x formulae (with values of x ranging from 2% to over 8%) and, whilst these have provided incentives for an incumbent and other operators to increase efficiency and deliver price cuts to consumers, the incumbent still dominates the fixed line market. In other words, we have concerns that the cumulative effect of price controls may have the effect of limiting competitive entry.

Our other current concern is that there is too little financial information in the public domain to usefully assess proposals on price controls. The revelation of commercially sensitive financial information should be one of the cornerstones of market liberalisation but the current lack of information from C&WG makes it extremely difficult to judge whether or not the cost of capital proposed is reasonable.

It is worth noting that Ofcom has recognised the potential impact of price controls over an extended period in its current Strategic Review of Telecoms. In addition, the Mergers & Monopolies Commission made a similar point in 1995 when reviewing the number portability issue commenting:

> "There is a fundamental difference . . . between the pressure which a regulatory price cap puts on a company and the pressure which results from competition. Competition can be expected to stimulate all-round benefits for BT's customers including, in particular, quality and range of services as well as prices, whereas price regulation will tend to lead mainly to cost-cutting, even if this would be at the expense of quality."

Therefore, although we recognise the arguments, outlined in Section 4.1, for explicit price regulation in the earlier stages of liberalisation of the telecommunications market in Guernsey, we reiterate our view that continuing detailed retail price regulation can lead to competition being muted if competitors have little room for manoeuvre around an incumbent's pricing structure and facility portfolio. In other words, price controls should not lead to under investment by the incumbent, as Section 4.1 also recognises, which in turn can impact the services and facilities available to both its retail and wholesale customers/competitors.

In relation to the development of competition, we recognise that Section 4.4 of this current Consultation Paper has acknowledged that rebalancing of prices between line rentals and call charges is an important issue in Guernsey. The view that we expressed in our response to OUR 01/22 was that rebalancing is an essential first step in the liberalisation process since, if not achieved, potential market distortions can be introduced and

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these will be more difficult to correct as time goes by. Therefore, we trust that the OUR does not wish to defer the achievement of full rebalancing by C&WG.

In relation to C&WG's retail prices, we accept the need to ensure that they are not abusively high but, at the same time, they should not be potentially predatory, either as a result of deliberate actions to undermine competitors or as a result of an interpretation of price controls. We appreciate that C&WG's pricing behaviour has been recognised by the OUR in Section 5 of this Consultation Document.

Against the background of the above comments, we would respond as follows to the questions within the Consultation Document:

Q1: We accept the arguments that there is a continued need for price control in the Guernsey telecommunications market subject to the points we make above.

Q2: We agree that incentive regulation remains the most appropriate form of regulation in Guernsey.

Q3: We agree with the proposal to require formal commitments to capital expenditure as part of the price control process.

Q4. We agree that all existing services in the price control should remain within a new price control.

Q5: With regard to broadband ADSL services and Frame Relay services, the market for such services is still nascent and we would caution against setting price controls for these services in a way that could inhibit competitive provision.

Q6: We agree that the C&WG DQ service should be included in the price control.

Q7: We do not believe that access to the alternative 118xxx DQ service providers should be included in the price control as this implies a limitation of the commercial freedom of the competitive providers.

Q8: We agree that calls from fixed lines (including payphones) to Guernsey mobiles should be included in the price control for the reasons outlined in Section 6.3.3 although the requirement seems to have stemmed from potentially discriminatory pricing by C&WG – which should be addressed through routes other than specific price controls.

Q9: We are not convinced that mobile services should be included in the price control at this stage but the position could be reviewed within the price control period subject to the development of competition.

Q10: Although we recognise the need for a specific limit on exchange line rental charges in the interests of protecting vulnerable users, we would not wish to deflect from full rebalancing in the broader context.

Q11: Any decision on capping of "local services" should be addressed in the context of the appropriate level of rebalancing necessary to give proper economic signals to potential entrants.

Q12: We agree that the leased line basket should be retained.

Q13: We do not have any particular proposals for basket structures and composition.

Q14: We accept, as we did in 2001, that the OUR wishes the price control to run for three years but we believe that there should be an option to review after two years.

Q15: We believe that carry over should only be at the discretion of the Director General and should be subject to a case-by-case examination. This will allow the Director General to review the reasons for carry over and the potential distortionary effect of allowing carry over.

In summary, we believe that it is most important:

- To protect low income or low user customers. This is an area where a more focused price control could be implemented, which would protect a particular group of consumers, while allowing competition to develop more freely for the remaining majority of customers.

- To ensure that the regulation imposed on the incumbent should not have an inhibiting effect on the development of competition.

- For the impact of any intended regulation to be considered not just in relation to its impact on the incumbent but on the market as a whole.

- To ensure that regulation at the wholesale level (including regulation of non-price factors) leads to effective constraints on C&WG's retail behaviour through the consequent competitive activity that it allows. In the light of the level of investment required in the industry, it is vitally important that the links between wholesale markets and retail markets are properly assessed.

We would be pleased to discuss particular aspects of our response with you in more detail if required.

Yours faithfully
NEWTEL GUERNSEY LIMITED

PETER C FUNK
DIRECTOR

PCF/jk

cc Malcolm Taylor - Newtel