



Office of Utility Regulation

Licensing of Internet Access in the Bailiwick of Guernsey

**Report on the Consultation
& Decision Notice**

Document No: OUR 04/04

April 2004

Office of Utility Regulation
Suites B1 & B2, Hirzel Court, St Peter Port, Guernsey, GY1 2NH
Tel: (0)1481 711120, Fax: (0)1481 711140, Web: www.regutil.gg

Contents

1. Introduction.....	2
2. Structure of the Paper.....	2
3. Review of Comments.....	3
4. Background.....	4
5. Provision of ISP Services.....	6
6. Licensing of ISPs.....	8
7. Conclusions.....	12
ANNEX 1.....	13

1. Introduction

In September 2003, the Director General of Utility Regulation (“DG”) published a consultation paper on the future licensing of ISPs in the Bailiwick. The purpose of the paper was to seek views of interested parties on how best to address ISPs which had previously been licensed by the States Telecommunications Board within the new regulatory regime.

The licensing of all telecommunications activities is the responsibility of the Office of Utility Regulation (OUR). However under the legislation a degree of discretion is afforded to the DG and in keeping with the OUR’s stated policy of regulating only where necessary, not all service providers previously licensed are now required to hold a telecoms license.

The DG wished to consider how, and to what extent, ISPs previously licensed under the old regime now needed to be licensed under the new regulatory framework including the terms and conditions that should apply if ISPs should be subject to licensing at all.

This report summarises the comments offered by respondents on the matters covered and sets out the DG’s consideration of these matters. The report also addresses the future actions that this report will now prompt and details the conditions that will be included in any licenses that may be awarded to ISPs.

2. Structure of the Paper

This paper is structured as follows:

- Section 3 lists the respondents to the consultation;
- Section 4 sets out the background to the consultation and the matters that have been considered;
- Section 5 addresses the activities that are being considered as requiring licensing under the proposals contained in the document;
- Section 6 addresses the core issues that were considered in OUR 03/27 and sets out the DG’s position on the licensing of ISPs;
- Section 7 sets out the next steps and explains the application process for ISPs; and
- Annex 1 provides, for information only, an overview of some of the configurations for service provision by ISPs using current technology.

3. Review of Comments

The Director General in OUR 03/27 invited interested parties to comment on the proposals for the licensing of ISPs in the Bailiwick. This report summarises the comments received and the DG's consideration of those comments.

Two organisations responded to the invitation to comment, as listed below:

- Cable & Wireless Guernsey; and
- Wave Telecom Ltd.

The OUR also attended a meeting on the 7th November 2003 organised by the Board of Industry ("BoI") and attended by a number of ISPs to discuss the matters dealt with in OUR 03/27. The OUR would like to record its appreciation to BoI for facilitating this meeting

The Director General wishes to thank those who have responded to this invitation to comment for their contributions. With the exception of the responses marked as confidential, written comments are available for inspection at the OUR's office.

4. Background

In OUR 03/27 the DG set out the background to the evolution of the licensing process in Guernsey. Essentially prior to the establishment of the OUR, the regulation and enforcement of States policy in relation to the telecoms market was undertaken by the States of Guernsey Telecommunications Board (“GT”). GT issued licences for the provision of certain telecommunications services including ISP and simple resale services. A number of current ISPs would have held licenses issued by GT.

With the establishment of the OUR and the introduction of the Telecommunications (Bailiwick of Guernsey) Law 2001 (“the Telecoms Law”) and the Regulation of Utilities (Bailiwick of Guernsey) Law 2001 (“the Regulation Law”), the licensing of telecoms services fell to the OUR.

In August 2001, the DG consulted on the scope of the services that would fall to be licensed under the new regime and on the form of the licences – including the rights and obligations of any operator holding a licence¹. Following the consultation the DG finalised the licence texts² and the scope of services to which they would apply³. In that context, guidance was given on what telecommunications services would not require to be licensed, although in line with the Law, the DG reserved the right to carry out a case-by-case examination of any specific activity to determine if it fell to be licensed.

A number of ISPs that had previously been licensed under old regime were allowed to continue to operate under their previous licences.

Currently the standard form of licence is based on a single modular licence that applies to all operators providing licensed telecommunication networks and services to the public in the Bailiwick. The fixed telecoms licence terms and conditions are published on the OUR website and are organised in “modules”; that is all the conditions considered necessary for a full telecommunications operator licensee are in the licence. However, certain groups of obligations and rights only become applicable as an operator either is found to have a dominant position in the market, or where the operator enters a certain market, e.g. payphones. Likewise, as competition increases it is intended that certain obligations maybe removed if they are considered no longer appropriate.

This regime, developed following public consultation, follows the general international trends of technology-neutrality and simplicity by avoiding many multiple licences for different activities. However in practice it has been identified that there may be scope to assess whether there is a requirement or a benefit to be

¹ Document OUR 01/02: Telecommunications in Guernsey; Licensing Framework for a Competitive Market – Consultation Paper

² Document OUR 01/18: Fixed Telecommunications Licence Conditions, and Document OUR 01/19: Mobile Telecommunications Licence Conditions

³ Document OUR 01/12: Telecommunications in Guernsey: Licensing Framework for a Competitive Market – Report on the Consultation Paper

gained from a specific class licence for ISP activities. It was against this background that the consultation was launched.

OUR 03/27 set out in detail both the legislative background and the history of the development of the licensing framework in Guernsey and the general parameters on what constitutes a licensable service under the law – a matter that was consulted on in 2001 and was not a subject of consultation in this document.

Views of Respondents

While the DG had not sought any comments on this issue, one respondent stated that it did not agree with the DG's position that call centres or audiotext services are exempt from licensing as a call centre *'requires a network or systems to be run and the provision of a service'* and that the only circumstances where a licence for audio text services would not be required is *"where the equipment over which the service is provided is operated under licence by another and the audiotext service provider simply updates the messages"*.

It agreed with the criteria set out in OUR 03/27 with regard to what should be licensed but it disagreed that the operation of CPE or that internal wiring and equipment is always exempt from the requirement to hold a licence as it believes that the internal wiring and CPE form a telecommunications network as defined in the Telecoms Law. It also commented that the operation of an ISP portal or content services would not require a licence if provided by a third party that was licensed.

Position of the DG

The matters referred to above were dealt with at the outset of the development of the licensing regime and were not being reopened for consultation in document OUR 03/27. However, the DG has considered the views expressed in the context of documents OUR 01/02 and OUR 01/12 which address these issues and has not been provided with any reason to amend those decisions at this time.

5. Provision of ISP Services

Prior to the consultation the DG received a number of queries and representations specifically relating to the provision of ISP services, the provision of access to internet services and the provision of access to the internet, in particular the services provided directly by ISPs to end users. Also relevant to this issue is the recent introduction of alternative means of internet access such as DSL technology.

This prompted the consultation in September 2003 to review the legal position in relation to licensing of ISPs, to assess where it currently falls within the licensing regime, and considers whether there should be any change to the licensing regime to address ISPs specifically.

The focus of review was on the provision of internet services and the provision of access to the internet by those ISPs that do not own or operate their own network but rather use the existing networks of Other Licensed Operators (“OLOs”) to enable their customers to access the internet and ISP services. Various technical configurations facilitating this were summarised in the consultation document and are reproduced in Annex 1 to this paper for information (it should be noted that the examples are not exhaustive or comprehensive but merely illustrative).

Figure 1 below illustrates how some of the terminology relating to the provision of internet services and access is used in this document and in document OUR 03/27.

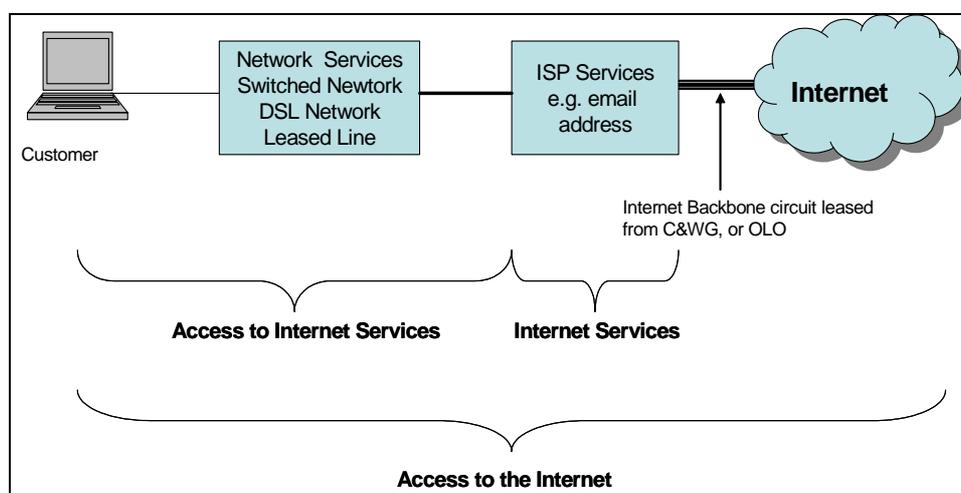


Figure 1

In brief the terms are used as follows:

- the provision of “internet services” is a phrase used to describe the services provided by an ISP that do not involve the conveyance, transmission or emission of messages over a telecommunications network, e.g. assigning email addresses or hosting webpace;
- the term “access to internet services” describes the conveyance of messages (in the form of IP packets) from the customer site or equipment, to the ISP; and

- the term “access to the internet” is used to describe the combination of the above two services with the onward conveyance and transmission of messages (in the form of IP packages) to and from the Internet.

The DG has previously concluded (in Document OUR 01/12) that the provision of the pure internet services that ISPs are involved in, such as the assignment of e-mail addresses, the allocation of web space, etc, do not comprise licensable services for the purpose of the legislation. However, those ISPs who are engaged in the provision to third parties of telecommunications services that comprise the conveyance of traffic over telecommunications networks that they lease from another licensed operator, are carrying out licensable activities.

The Director General believes that the majority of ISPs in the Bailiwick fall into this category and sought views on whether respondents agreed with her position. She also outlined a number of methods by which ISP services may be offered to assist respondents.

Views of Respondents

Both respondents commented on this issue. One respondent agreed that the scenarios described reflected the manner in which ISP services in the Bailiwick can be delivered. Another respondent believed that a further scenario existed to cover the DSL wires only service (Broadband Lite). It further stated that there is also the potential for ISP to offer services using Fixed Broadband Wireless Access. In addition it believed a significant proportion of internet provision is provided by UK based ISPs.

Position of the DG

The DG notes the alternative methods referred to above but notes that the provision of ISP services by UK based ISPs is not a licensable activity within the Bailiwick and is therefore outside the scope of this consultation. She agrees that there may be in future other means of providing these services and will keep this under review.

6. Licensing of ISPs

The DG set out in 03/27 a number of matters that she believed merited consideration in determining the most appropriate means of licensing of ISPs where it is clear that an ISP is engaged in the provision of licensable activities as defined under the Telecoms Law

The three options that warranted consideration in achieving this, in the DG's opinion were:

- Whether to exempt ISPs from a requirement to hold a licence – such exemptions can be made with or without conditions;
- Whether to issue a “class licence” which includes specific conditions – under this option, all ISPs meeting the conditions could operate without an individual licence in the company's own name, subject to registering with the OUR; or
- To issue individual licences – in this case each ISP receives an individual licence in its name with terms and conditions in the licence.

The DG set out her view on these matters in OUR 03/27 and sought comments from interested parties.

Views of Respondents

Both respondents commented on this issue. While both agreed in principle with the DG's approach that ISPs should not be exempt from licensing there was a divergence of how any licensing scheme should be applied.

One favoured a separate class licensing scheme for ISPs and did not believe that a separate scheme would necessarily add complexity or costs to the regulatory regime.

It further commented that the principle of a class licence could be used to cover ISPs with a fixed licence charge, with or without the need for registration and using conditions similar to those already in the fixed telecoms licence. It believes that the ISP market in the Bailiwick is effectively fully competitive and therefore does not believe that the regulatory regime on such operators need be particularly onerous. However should an ISP start to offer services in competition with full telecoms operators then a full telecoms licence should be required.

It also stated that if the DG were to consider making certain adjustments to the standard telecoms licence for ISPs then effectively the one-size-fits-all regime will have been abandoned which further supports its argument for a separate distinct regime for ISPs.

The second respondent agreed that it is important that consumers are offered a degree of protection and that therefore ISPs – given that they could potentially offer in future an alternative service to that offered by C&WG, should be regulated accordingly. It further stated that if an ISP provides a lesser range of services and the licensing regime reflects that, then so too must its rights and obligations be similarly tailored.

It also argued that ISPs should not be entitled to wholesale rates for leased lines as cwgsy – C&WG’s own ISP – does not receive such rates. It also believed that an ISP competing with cwgsy should not receive the right to interconnect.

It also commented that any simplified licence, while it may contain the same provisions as the existing telecoms licence, should be restricted to ensure that the rights and obligations are appropriate. It agreed that a separate regime may add complexity and thus costs to the administration of the regulatory regime but believed that a simplified licence – with restricted rights and obligations – could reduce the costs of that administration. It did however believe that it might be useful to have a separate regime for ISPs that only intend to provide traditional ISP type services and that involve a limited amount of conveyance. It also believed that it would be unfair and a breach of the requirement for impartiality for the OUR to grant a simplified licence with full rights but limited obligations.

In the event that the DG determined that a separate licence regime be developed it drew distinctions to what it saw as three possible categories of ISP sectors that could be considered, namely;

- (i) ISPs engaged in web hosting, email and browsing – these would not require a licence as they would not constitute telecoms services under the Law
- (ii) ISPs engaged in Systems Integration and Facilities Management – this category could have a cut-down licence with restricted rights and obligations
- (iii) Full ISPs – this category would cover those that offer full ISP based services. It believed only this category would be entitled to access to wholesale services

However it agreed that any rights and entitlements of operators should be determined by their activities in the market rather than by regulatory intervention.

Furthermore, it believed it important that licence conditions should remain as similar as possible for all operators and in particular for those within a similar group or class. It believes that the dis-application of conditions should be the exception rather than the rule and should be made in exceptional circumstances and where there are justified reasons for so doing. In particular it believes that an ISP that is actually competing in the full telecoms market should receive a full telecoms licence (similar to that issued to C&WG, Wave and Newtel) and should as a result be also entitled to full interconnection and access rights.

Position of the DG

The DG’s view is that ISPs engaged in the conveyance of traffic can, due to technological advances (e.g. voice over IP or “VOIP”), potentially provide a full telecommunications service in direct competition with existing licensees and therefore it is appropriate that they be subject to licence conditions in such cases.

While the DG has noted there is some support for a separate class licence type regime for ISPs she is not convinced that a distinct and fully separate licensing regime for

ISPs (or the provision of access to the internet) would be beneficial for the reasons set out in OUR 03/27.

In particular, it is important in the interests of promoting competition, to keep any barriers to market entry to a minimum. It seems clear that the introduction of a separate distinct licensing regime could potentially increase barriers to entry, in the first place through the introduction of complexity into the licensing regime attendant on multiple licence categories and sets of conditions. Overall the costs of defining and policing the distinction would appear unduly burdensome and may result in higher charges to users with little, if any, visible benefit.

In addition strictly defining the activities of a category of licensee could create further barriers and restrict innovation and the development of new services for customers because any ISP would have to overcome an additional licensing hurdle in order to launch new services that are in competition with telecommunications operators and these would have to be tightly defined. The administrative overhead and cost on the sector would appear to yield no particular benefits.

The DG therefore believes that a modification to the current individual licensing scheme is most appropriate in the circumstances. The DG believes that such an approach will enable ISPs to be able to avail of the benefits that go with being licensed while ensuring that the market, and consumers are safeguarded.

The existing regime would appear to adequately provide that the rights, entitlements and obligations of the parties in the market are determined by their technical and financial capability and commitment, in that, only those operators who invest in the capability of interconnecting with the incumbent network will be able to obtain interconnection services and rates. Similarly only those licensees meeting the technical requirements for access will be able to obtain access at the relevant rates, terms and conditions.

On the other hand, the position of smaller operators or service providers in the market is protected in that the licence of the dominant incumbent requires non-discriminatory treatment of all service providers when compared to its own downstream arm. Thus, such licensees may receive service terms and conditions, including rates, that are different from those offered to retail customers, but that are also different to RO rates in some circumstances where this is in accordance with licence conditions (i.e. non discriminatory) and the licensee does not wish to purchase the full technical access or interconnection product.

The DG notes the comments with regard to C&WG's own ISP. In the first instance, as described above, there should be no discrimination of treatment between competing ISPs, including C&WG's own ISP. In addition, the DG is of the view that licensed ISPs purchasing services from C&WG should not pay for costs incurred by C&WG in servicing the broader retail market. In other words, wholesale rates, which should not include retail costs such as marketing costs, should be available to *all* licensed ISPs.

The DG set out in OUR03/27 her view on the conditions that might be dis-applied and the process that would need to be followed by ISPs should they wish this to be the case. The DG is conscious that allowing such a procedure to exist may result in

similar type ISPs having slightly varied licences and is conscious that from a transparency viewpoint this may not be ideal. However because the nature of the conditions that will be considered is limited and licences awarded to ISPs will be publicly available, the DG does not believe that this such in itself present any significant problems for the market.

As was stated in the consultation document, she believes that it is incumbent on her, in accordance with the legislation, only to dis-apply conditions in response to fully justified requests for exemptions. Therefore she will consider requests to have the specific licence conditions dis-applied, providing their reasons and the effect that the granting of the request would have, including the benefits of dis-applying any conditions and how consumer interests will be protected in such cases are clearly demonstrated by the applicant. Section 7 comments further on the application process.

Therefore the DG will consider dis-applying the following conditions subject to the applicant making out the case for such a modification;

- Condition 16 – monitoring and development plans;
- Condition 17.9 – minimum service levels;
- Condition 17.11 – six monthly reports on service levels;
- Condition 17.13 – establishment of User Councils; and
- Condition 22 – Cessation of Services.

In summary the DG believes that the maintaining an individual licensing regime, tailored to the needs of ISPs, is most appropriate given the current state of the market and the need to ensure that the regulatory regime is proportionate for the market in the Bailiwick.

7. Conclusions

The DG is grateful to those that responded to this consultation and believes that this report will assist those ISPs that are currently active in the market to consider how best the licensing regime can be applied to their particular business and their plans for this business.

Applications for licences for ISPs will be accepted on the standard licence application form (OUR 02/09). It is important that applicants complete the application form in full as incomplete applications may delay the processing of an application.

Given the transition that is involved for most ISPs, the DG is proposing an interim application process that will apply only to ISP licence applications that are received before the 30th June 2004. Such application may be made in the standard way, using OUR 02/09, but the DG will waive the application fee during this period. In addition to the information requested in OUR 02/09, applicants that wish to make a request for certain conditions to be dis-applied must also include the following information:

- (a) the licence conditions that they are requesting that be dis-applied. The conditions that will be considered are those listed in Section 6 above
- (b) the detailed reasons why the applicant believes the conditions should be dis-applied; and
- (c) a statement agreeing to the notify the DG should the applicant at anytime after the issue of any modified licence engage in services beyond the scope of the ISP licence. In such an eventuality cases the applicant will be issued a full telecommunications licence

OUR 02/09 has been updated to include a section on the additional information ISPs will need to provide should they wish to apply to have certain conditions dis-allowed.

From 1st July 2004, all applicants will be required to pay the full application fee.

Ends

ANNEX 1

This section briefly describes a number of the current ways in which customers access the internet using the services of an ISP. It describes the differentiation between the provision of licensable services and the provision of internet services that are not licensable by describing in each case, which entity is providing services and to whom.

(1) Dial up access to the Internet

Using a dial up modem is still one of the most common means for end users to access the internet. As far as the customer is concerned they simply make the equivalent of a normal phone call on their modem and they pay their normal telecoms provider a call charge for the use of the line. The customer may pay his ISP directly for services or the ISP may receive a portion of the call charge paid. This paper is concerned with the underlying network activities and not the charging or commercial arrangements at this stage. Figure 1 illustrates one form of underlying structure that might be used to provide dial up internet access.

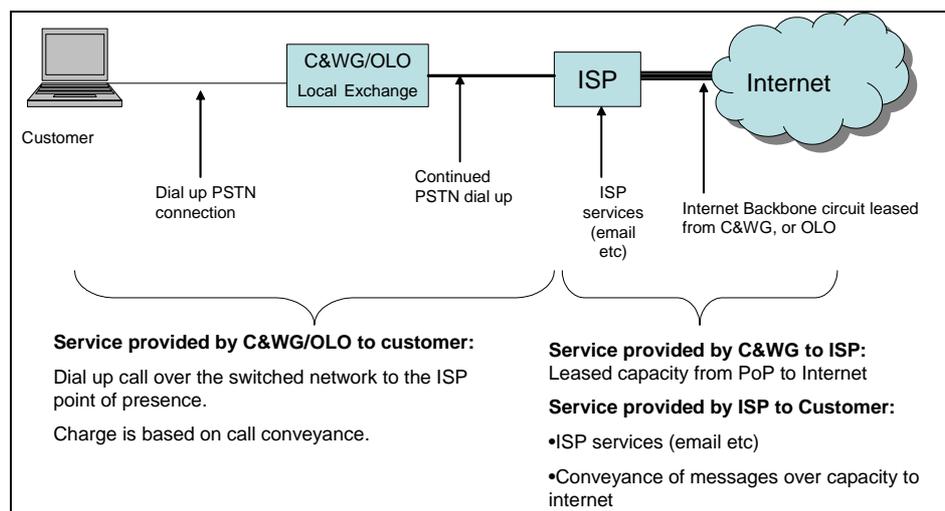


Figure 1: Dial up Access to the Internet

In this case, the customer contracts with his/her telecoms provider for normal dial up services. The customer pays the published call charge and in return the telco provides a call service over the normal switched network to the ISP PoP.

In turn the ISP purchases dedicated leased capacity (an Internet Backbone Service or IBS) from a network operator. The ISP then sells to the customer an “internet access” service comprising value added services such as email addresses, webspace etc, along with the conveyance of the customer’s data to and from the internet.

Figure 2 below illustrates a variation on this mechanism:

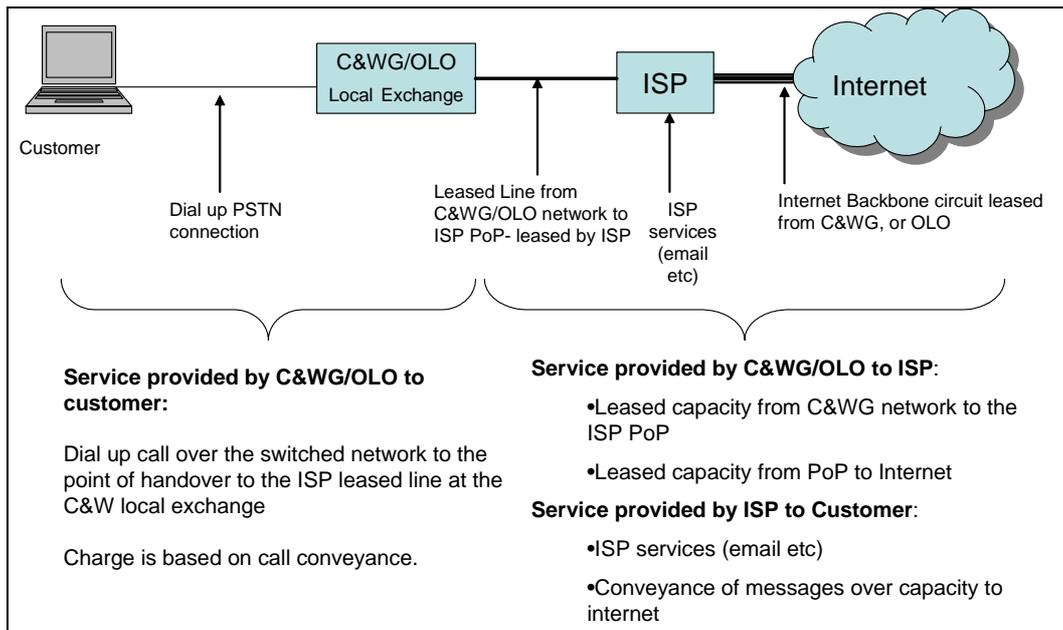


Figure 2: Dial up Access to the Internet

In the case illustrated in Figure 2, the customer receives precisely the same service, but that part of the service provided over the normal switched network is somewhat less, because the ISP connects to the switched network via a leased line, or dedicated capacity.

In both of these cases the ISP is providing a service to the customer that consists of “*the emission, transmission, switching, conveyance or reception of messages within, to or from the Bailiwick by means of a telecommunications network*”⁴ insofar as the ISP is responsible for the conveyance of messages over the IBS. As a result this aspect of the ISP’s activities falls to be licensed under the definitions in the laws.

(2) Accessing the Internet using Leased Lines

Where a larger user has a significant amount of traffic, it may be cost effective for that user to purchase a leased line from the network provider directly between the customer premises and the ISP PoP. This provides the customer with its own dedicated link to its ISP and it does not have to share the capacity with any other customers.

This approach is more likely to be adopted by larger corporate users. In this case the customer pays the network provider for the leased line service and the service purchased from the ISP is identical to that in the dial up scenario – making the licensing position identical also. This is demonstrated in Figure 3 below:

⁴ See the definition of “telecommunications service” in section 31 of the Telecoms Law

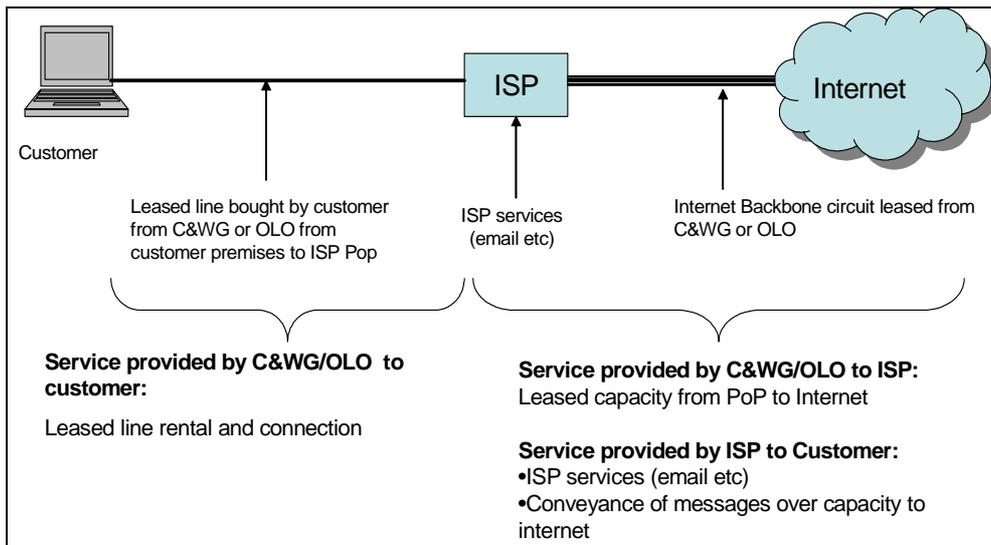


Figure 3: Leased Line dedicated Internet access

In a variation on this, the ISP could lease the circuit between the ISP PoP and the customer premises, and bundle this with the rest of the service the ISP provides and sell a total solution to the end user, adding value through management and other services. This is illustrated in Figure 4:

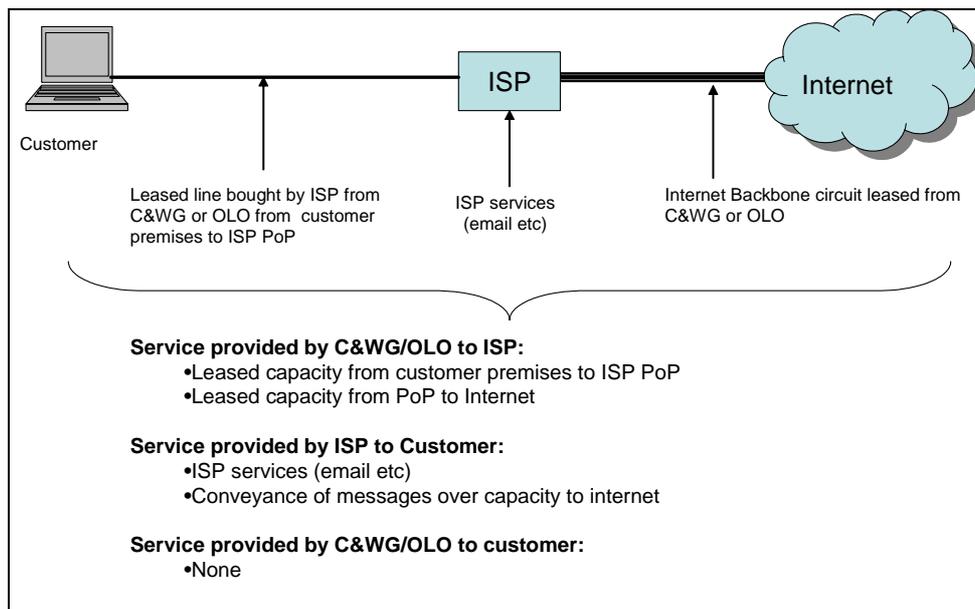


Figure 4: Leased Line dedicated internet access purchased from an ISP

It is clear from the above scenario, that ISPs are free to enter into more and more of the value chain, purchasing network access and services and bundling these with value added services to be sold on directly to customers.

(3) Accessing the Internet using DSL

In Guernsey, C&WG has launched a DSL service which has been rolled out throughout the Bailiwick. There are various characteristics of this service that differentiate it from the other types of access, but this paper is primarily concerned with the network arrangements and licensable activities that underpin the provision of

the service. Figure 5 shows how the ISP once again purchases certain network services and elements from the network provider and then bundles these for resale along with their own services to end users. The end user may also purchase some services (the DSL access service) from the network provider.

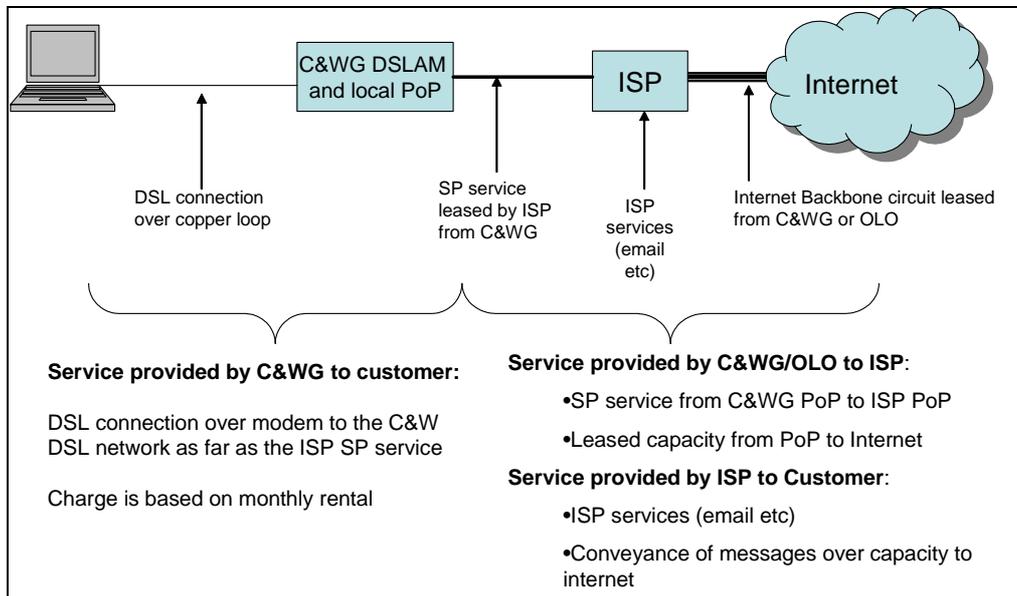


Figure5: DSL (Broadband) access to the Internet