



Office of Utility Regulation

Fees for
Telecommunications Licences

Consultation Paper

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Office of Utility Regulation
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1. Introduction

The Office of Utility Regulation (“OUR”) is funded by a licence fee payable by all licensed operators across the three utility sectors. For the electricity and postal sectors, the fee is set to cover the costs associated with regulating those sectors. This currently stands at £180,000 for both Guernsey Electricity and Guernsey Post. For the telecoms sector, because of the nature of the regulation of this sector, the fee is set based on a percentage of relevant turnover and is payable by any operator holding a telecommunications licence issued under the Telecommunications (Bailiwick of Guernsey) Law 2001.

This mechanism was put in place in 2002 and the Director General (“DG”) believes it is now timely to consider whether any changes are needed to the procedures used in setting licence fees and the administration associated with its collection in order to reduce the administration costs associated with the submission of licence fees where possible. In this paper the DG consults on certain amendments to the current mechanism for calculating and collecting licence fees for telecommunications licences throughout the lifetime of the relevant licence. He intends to finalise any new arrangements in time for the setting of licence fees for the start of 2007.

Separate to this the DG is considering further changes to the current requirement for certain operators to hold a telecoms licence. Currently OUR 01/12 sets out the scope of services the provision of which is deemed to require a licence. The DG intends to consult on this issue at a later date.

In this paper, the DG sets out a proposed revised mechanism for setting and administering the licence fees payable by licensed telecoms operators. Respondents are invited to comment on the proposals.

2. Consultation Procedure and Timetable

The consultation period will run from 9th January 2006 to 17th February 2006. Written comments should be submitted before 5.00pm on 17th February 2006 to:

Office of Utility Regulation,
Suite B1 & B2,
Hirzel Court,
St. Peter Port,
Guernsey GY1 2NH.

Email: info@regutil.gg

All comments should be clearly marked “Comments on Licence Fees for Telecommunications Licences - Consultation Document”.

In line with the policy set out in Document OUR 05/28 – “Regulation in Guernsey; Revised Consultation Procedures”, the DG intends to make responses to the

consultation available on the OUR website. Any material that is confidential should be put in a separate Annex and clearly marked so that it can be kept confidential. The DG regrets that he is not in a position to respond individually to the responses to this consultation.

This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.

3. Background

3.1. Legislative background

The Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 (“The Regulation Law”) and the Telecommunications (Bailiwick of Guernsey) Law, 2001 (“the Telecommunications Law”), together empower the DG of Utility Regulation to regulate the telecommunications market in the Bailiwick of Guernsey.

In accordance with section 4(1)(d) of the Regulation Law, the DG’s functions include determining and prescribing the fees and levies payable on an application for, or the grant or renewal of, or over the term of, a licence and the interest and penalties payable in the event of a default in the due payment of the fees or levies. The DG is also required to publish fees in accordance with section 6 of the Telecommunications Law.

The fees or levies charged by the DG are expected to meet the costs of the OUR over the term of the licence in connection with the exercise of the Director General’s functions and powers.

The DG is also required to establish a fund under section 9 of the Regulation Law known as the “Public Utilities Regulation Fund” in to which licence fees shall be paid and from which costs of the OUR shall be paid. The DG is also required to maintain proper accounts, have the accounts independently audited and submit the audited accounts along with its annual report to the States.

3.2. Public Utilities Fund

The DG has established the Public Utilities Regulation Fund in accordance with the legislation and the Fund is audited annually. The accounts and annual report of the DG are required to be submitted to the Department of Commerce and Employment in accordance with the Laws and are then presented to the States of Guernsey. The OUR’s Annual Report and Accounts are available on the OUR’s website.

4. Telecommunications Licence Fees

In 2002, the DG determined, following consultation with industry, to set licence fees based on a percentage of turnover. In addition, for operators with an annual relevant turnover (i.e. income derived from licensable activities) below £150,000 a simple fixed fee of £500 per year was set. Above this level the percentage of turnover requirement applied. Clearly to-date C&W Guernsey has contributed the greatest portion of licence fees for the telecoms sector, although with increased competition, other operators' fees are steadily increasing. In addition, a number of licensees continue to pay the fixed licence fee of £500.

Licensees have been required to submit a certified statement of relevant turnover which is essentially a statement from the company's auditors confirming the relevant turnover.

In seeking to assess whether any changes are now required to the manner in which licence fees are collected, the DG is informed by the experience with the operation of the licence fee mechanism to-date. A number of licensees have highlighted areas whether they believe certain amendments may be made which would reduce the administration requirements (and costs) associated with submitting licence fees.

Among the issues raised with the DG have been the following:

- For smaller operators with a turnover of less than £150,000 (and therefore paying a flat £500 licence fee) the cost of providing a certified statement can substantially exceed the licence fee;
- For larger operators (such as C&WG) the provision of a separate certified statement is additional to the costs of auditing its regulatory accounts and normal company accounts; and
- The single limit of £150,000 is somewhat arbitrary and a sliding scale of thresholds may help further reduce the administration required to comply with submitting licence fees.

4.1. *Level of Licence Fees*

Irrespective of the mechanism used to spread the cost of running the OUR across all of the regulated licensees in the sector, the total level of the income collected remains directly related to the costs of the Regulator's office in regulating that sector. Currently, as already noted, licence fees are set by reference to the relevant turnover of the licensed operators. For 2006, the fee is set at 1.4% of relevant turnover for operators with a relevant turnover greater than £150,000. Under this threshold a flat fee of £500 applies.

The DG proposes amending the basis for the calculation of the licence fee to provide for a simpler method of calculation and to take account of the different scale of operator currently operating in the Guernsey market. He is therefore considering amending the licence fee calculation as follows:

- For operators with an annual relevant turnover less than £200,000 a flat licence fee of £500 will be payable;

- For operators with an annual relevant turnover less than £500,000 a flat fee of £2,500 will be payable; and
- For operators with an annual relevant turnover greater than £500,000 a licence fee based on a percentage of relevant turnover will be payable.

While the percentage fee payable in 2007 has not yet been determined, the DG is hopeful that a reduction from the current level (i.e. 1.4%) will be set later this year.

Q.1 Do respondents agree with the proposed modification to the licence fee structure being proposed above? Where respondents have alternative propositions these should be set out.

4.2. *Certified Statement of Turnover*

The requirement to provide a certified statement confirming the relevant turnover of a licensed operator was introduced in 2002. The OUR has published guidelines (OUR 02/39R) to assist operators provide an appropriate statement to comply with this requirement.

The feedback from operators to-date has highlighted that the requirement to provide a statement of relevant turnover requires them to incur a cost which, for smaller operators, is in excess of the actual licence fee. For C&WG the requirement to provide a separate audit statement to accompany its licence fee calculations is an additional requirement it must meet in addition to the audit of its regulatory accounts and its normal company accounts.

The DG therefore proposes to amend the requirement for a certified statement of relevant turnover. He proposes removing the requirement for annual certified statements from all operators. For licensed operators required to prepare regulatory accounts, the DG proposed accepting these accounts as the basis upon which to base the licence fee. The percentage of relevant turnover will apply to the sum of the Regulatory Fixed Retail Revenues and Mobile Revenues. The actual level of licence fee may need to be adjusted to take account of the difference between the certified statement of relevant turnover and that reflected in the Regulatory Accounts.

For all other operators the DG proposes to accept a statement of relevant turnover signed by two directors of the company as the basis for calculating the fee. The DG will reserve the right to undertake a separate audit (essentially spot-checks) on any submission. The cost for such an audit will be borne by the licensee and will be undertaken by an auditor appointed by the DG.

Q.2 Do respondents agree with the proposed change to the requirement to provide a certified statement of relevant turnover? Where respondents have alternative propositions these should be set out.

5. Next Steps

The DG has previously published guidelines to assist operators in submitting their statement of relevant turnover. In the event that any changes are made to the licence fee mechanism the DG will update the guidelines at that time. At this time the DG intends to retain the option for licensees to pay fees in quarterly instalments.

Separate to this the DG is considering the licensing requirements for operators providing services in the Bailiwick. While the requirement to hold a licence is driven primarily by the Telecoms Law – in that the Law sets out what services require licensing – the DG is giving consideration to whether, in light of the nature of services provided by certain licensed operators and the scale of their operations, whether a relaxation of the current requirement to hold a licence can be considered and in particular whether scope exists to exempt certain operators from the requirement to hold a telecommunications licence. It is intended that any changes to this issue will not take place until after the review of commercialisation and regulation has been considered by the States.

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