

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

13 September 2007

Dear John

Formal dispute between Wave Telecom and Cable and Wireless Guernsey – Refusal to meet request to provide On-Island 45 Mbit/s leased line tail circuits

C&W Guernsey totally rejects the proposed finding in OUR D07/13¹ that it has acted in breach of Licence Condition 32. We note that the DG does not consider it necessary to consider whether C&W Guernsey has breached the other two Licence Conditions as alleged by Wave Telecom (Wave).

Without prejudice to our rejection of the proposed finding, we understand that the OUR is concerned about any suggestion of anti competitive behaviour, as is C&W Guernsey. We are committed to ensure that as a business the best commercial practices are followed and implemented. As the OUR is aware the Company already has a process for ensuring that all staff are aware of our legal and regulatory obligations. Following the recent reorganisation it was already intended to repeat and re-emphasise this training. In light of the concerns expressed by the OUR in its draft findings we will start that new process immediately.

We would ask the OUR to consider becoming a part of that process to give guidance about its interpretation and considerations and how they impact on a commercial business.

We are also extremely disappointed that Wave Telecom have chosen to involve the OUR in this matter which we consider to have been a normal commercial issue. In considering such matters we would urge the OUR to take a wider view than merely considering the single specific issue and also taking into account the wider pan island position, which approach is that pursued by the OUR themselves on other issues upon which they have consulted.

It is an inescapable fact that there are legal, regulatory and commercial relationships between Cable and Wireless and Jersey Telecom, the sole shareholder in Wave Telecom, at all levels over the islands of Guernsey and Jersey. Cable and Wireless believes that this presents an important challenge for

¹ OUR D07/13 – Refusal to meet a request to provide On-Island 45 Mbit/s Leased Line tail Circuits – Dispute between Wave Telecom and cable and Wireless Guernsey – proposed Finding in Dispute – September 2007

us and for the regulatory authorities in both islands because, whilst the current legislative framework is on a single island basis, in fact a more proportionate, effective and useful regulatory response would consider the broader relationship between the two companies across both islands. The OUR has a clear interest in both the market in Jersey and the investment and commitment in and to Guernsey and Jersey by Cable and Wireless and JT respectively because it has a direct impact on trade in Guernsey (the same of course is true in reverse for the JCRA). Hence, in a case like this, the OUR would be able to consider allegations of misconduct in Guernsey taking account of relevant and connected circumstances and behaviours in Jersey.

The DG relies to a considerable extent on the elapsed time that passed between Wave requesting an On-Island 45 Mbit/s service be made available and the date it was introduced, in finding that the behaviour by C&W Guernsey equated to a refusal to supply. However, the timing of the Wave requests has been ignored.

Having been advised by C&W Guernsey at the beginning of September 2006 that it was reviewing its portfolio, Wave did not raise the matter again until over four months later. Even then the email from Peter Le Chevalier to Gregory Jordan dated 9 January 2007 just says '*Please can you confirm the position regarding the development of the 45 mbit On-island Circuit...*' Such a delay and such wording does not portray an urgent requirement to meet the '*...demand from Guernsey business customers...*' as asserted by Wave². Similarly a gap of over 5 months between that second request and the lodging of the formal complaint does not demonstrate that the matter is of the utmost importance to the business.

If the 45 Mbit/s On-Island leased line service is in as much demand by the local market as Wave implies we would have expected:

- Wave would have communicated with others within C&W Guernsey regarding the required service
- Escalated the matter again to the Chief Executive as a matter of urgency soon after 9 January 2007
- C&W Guernsey would have received at least some requests for prices for 45 Mbit/s retail circuits, or requests for wholesale circuits from other OLOs

The fact that Wave did not pursue its request for the development of a 45 Mbit On-Island leased line service appeared to C&W Guernsey to mean that it was a speculative request on the part of Wave, and hence the matter was treated as low priority by C&W Guernsey. The importance to Wave of the service only became apparent when they lodged the formal complaint, and C&W Guernsey took immediate steps to develop the service and introduce it in the wholesale and retail portfolios.

Since the announcement of the availability of the service, C&W Guernsey has not received any specific enquiries or orders from either retail or wholesale customers – demonstrating that the view of C&W Guernsey is correct i.e. Wave has exaggerated the potential market.

We note that the DG chooses to take no view as to whether the '*45 Mbit service represents one of the most important services for the island's business community*³' or not. We are surprised by this as we would have thought that the OUR would appreciate that C&W Guernsey has to prioritise the work of its staff to

² OUR D07/13 - page 5.

³ OUR D07/13 page 13

ensure it operates in an efficient manner. It is reluctant to commit resources to develop a product for which the market requirement is unproven – where is the forecast that C&W Guernsey has suggested Wave should be required to provide to the OUR to prove that there is a need for the service?

If there is no real demand for the service, then Wave cannot have suffered as a result of the service not being available and C&W Guernsey cannot be in breach of Licence Condition 32.

Kind regards

PETER STAHELIN
Director of Legal & Regulatory Affairs