



Office of Utility Regulation

Proposed Decisions under The Telecommunications (Bailiwick of Guernsey) Law, 2001

Proposed Application of the Code
to Wave Telecom Ltd and modification of Wave
Telecom's licence

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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

1. Introduction

The Telecommunications (Bailiwick of Guernsey) Law 2001 (“the Telecoms Law”) makes provision for the Director General (“DG”) to include a condition in any licence granted to an operator of a telecommunications network to allow them have access to and use of land to facilitate the establishment and operation of a telecoms network. The Code, which sets out the rights, powers, duties and obligations of a licensee to which the code is applied is detailed in Schedule 1 of the Telecoms Law. Section 9 of the Telecoms Law sets out the details of the process to be followed in order to allow an operator have access to the Code.

The Code enables a licenced operator to exercise certain powers for the purposes of establishing, operating, maintaining, enhancing, improving or protecting its network or to provide telecoms services to inhabitants of the Bailiwick.

In 2002 the Director General issued Wave Telecom a licence to provide fixed telecommunication services. Wave has now applied to the DG to have the Code applied to its fixed licence. The background to this application is the on-going development.

Wave is currently continuing the rollout of its fixed network, including the continuing build of and interconnection of its ‘Liberty’ sub-sea Cable installation. This includes including arranging for a telecommunications cable to be laid across the foreshore at Pembroke Bay and across the Common at L’Ancrese. Wave is negotiating a licence agreement with the Crown, which owns the foreshore, to gain permission to lay cable across the foreshore. Following investigations by the company it determined that ownership of the L’Ancrese Common is unclear. Wave has applied to the DG for the Code to be applied to its fixed licence. This is in order to enable Wave to rely upon the Code to undertake works at L’Ancrese Common to facilitate and establish the operation of its fixed telecoms network.

Among other purposes, the Code permits licencees to gain access to third party property for installing, laying and maintaining infrastructure such as a duct as proposed to be laid by Wave across the Common at L’Ancrese. The construction and interconnection of the ‘Liberty’ cable is part of Wave’s plans to increase competition in the fixed line market. Applying the Code to its Fixed Licence will ensure that Wave is able to roll out its network and will also bring Wave’s Fixed Licence in line with its 2G and 3G licences.

This consultative document does not constitute legal, commercial or technical advice. The Director General is not bound by it. The consultation is without prejudice to the legal position of the Director General or his rights and duties to regulate the market generally

2. Consultation Procedure and Timetable

The consultation period will run from Thursday 31st January to Monday 11th February 2008. Written comments should be submitted before 5.00pm on Monday 11th February 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 “Wave Telecom: Comments on Proposed Decisions under the Telecommunications (Bailiwick of Guernsey) Law, 2001 - Consultation Paper”.

In line with the policy set out in Document OUR 05/28 – “Regulation in Guernsey; Revised Consultation Procedures”, the DG intends to make any further comments received 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. However the DG regrets that he is not in a position to respond individually to the responses to this consultation.

3. Proposed decision to Apply the Code in Schedule 1 of the Telecoms Law

Section 9 of the Telecoms Law requires the DG to publish notice of his intention to apply the Code, as set out in Schedule 1 of the Telecommunications Law. The Code sets out certain rights, powers, duties and obligations that are applicable to the licensee in relation to access to land. The Code has already been granted to C&WG and to Wave Telecom in respect of their mobile business and to C&WG in respect to its fixed business.

The DG may apply the Code where in his opinion it is not technically or economically feasible for the telecommunications network of that licensee to be established, operated or maintained without the Code. The rights in the Code are designed to ensure that operators with requirements to provide Bailiwick wide telecommunications networks are capable of meeting those obligations. In addition, notwithstanding the application of the Code, the licensee is still subject to the planning laws of the Bailiwick.

The DG considers it reasonable to expect that Wave Telecom will require the rights in the Code to establish, maintain and improve its network. The DG therefore proposes that the Code be applied to Wave Telecom.

4. Section 9 of the Telecoms Law

Under Section 9(4) of the Telecoms Law the DG is required to consult publicly before applying the Code to an operator. Therefore he now invites comments on whether interested parties believe it is appropriate that Wave Telecom’s fixed licence includes a condition that allows it to have the Code apply to it. The DG will consider fully all comments received and will publish notice of his decision

5. Modification of Wave Telecom's Fixed Licence

In the event that the DG, following consultation, agrees to apply the Code to Wave Telecom, he proposes to include a new licence condition in Wave Telecom's fixed Licence. The licence condition shall be identical to that currently included in the fixed licence of C&WG and shall state the following:

Condition 22:

The Licensee shall be entitled to all powers and rights and subject to all such obligations as are set out in the Code. Nothing in this Licence shall absolve the Licensee from any requirement in law to obtain such additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed Telecommunications Network and the Licensed Telecommunications Services and for the exercise of its rights or discharge of its obligations under this Licence.

This consultation therefore is also in exercise of the DG's duties under Section 8 of the Telecoms Law 2001.

6. Conclusion

The DG is publishing this statutory consultation in accordance with the provisions of Section 9 of the Telecoms Law (with respect to the Code) and Section 8 of the Telecoms Law with respect to the proposed modification to Wave's licence.

The DG will publish his decision on this matter as soon as is practicable after the consultation period and will undertake any further actions as are needed that result from the outcome to this consultation.

ENDS