



Telecommunications Licence

for

XKO Communications Systems (Jersey) Limited

JERSEY COMPETITION REGULATORY AUTHORITY

**Class I Licence issued to
XKO Communications Systems (Jersey) Limited to provide ISP services**

under

THE TELECOMMUNICATIONS (JERSEY) LAW, 2002

The JCRA, in exercise of the powers conferred on it by the Telecommunications (Jersey) Law 2002, grants to the Licensee a Licence to run a Licensed Telecommunications System and provide Telecommunications Services (as these terms are defined in the Conditions of this Licence), within, to and from the Bailiwick of Jersey and subject to the Conditions, all lawful directions of the JCRA and all applicable laws, rules, regulations, ordinances and orders of the States of Jersey.

DATED 1 December 2003

SIGNED

**Charles Latham
Executive Director, JCRA**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Telecommunications (Jersey) Law 2002, has, except where the context otherwise requires, the same meaning in the Licence and the Conditions that it has in the relevant Law. In addition, the expressions set out below have the meanings given to them below:

“**Access**”: means the ability to obtain a required service, facility or function;

“**Class I Licence**”: means this Licence;

“**Conditions**”: means Conditions 1 through 13 of this Licence, as may be amended, revoked or added to by the JCRA from time to time;

“**Direction**”: means a written statement issued by the JCRA with which a licensee must comply;

“**Directory Information Services**”: means services offering information concerning the name, number, address, customer type and directory type in respect of customers who have been provided with telecommunications directories and/or services relating to directory information;

“**Interconnect**”: means the connection of two Licensed Telecommunication Systems;

“**JCRA**”: means the Jersey Competition Regulatory Authority;

“**Licence**”: means this Licence to run a Telecommunications System, subject to the Conditions;

“**Licence Commencement Date**”: means the date on which this Licence is signed by the JCRA;

“**Licence Fee**”: means the fee prescribed by the JCRA under Article 17 of the Telecommunications (Jersey) Law and payable by the Licensee;

“**Licensed Operators**”: means any person who, for the time being, has the benefit of a Licence granted under the Telecommunications (Jersey) Law;

“**Licensed Telecommunication System**”: means the system for the conveyance of messages through the agency of energy which the Licensee is authorised to establish, operate and maintain in the Bailiwick of Jersey;

“**Licensee**”: means XKO Communications Systems (Jersey) Limited;

“**Network**”: means a set of interconnected devices across which a telecommunicated message can be passed;

“Other Licensed Operator”: means any person who, other than the Licensee, for the time being, has the benefit of a Licence granted under the Telecommunications (Jersey) Law;

“PSTN”: means Public Switched Telephone Network

“Public Telecommunication System”: means a communications system to which the public have access which includes, but is not limited to, fixed line and mobile telephone networks;

“Subscriber”: means a legal or natural person who has a contract with the Licensee to receive Telecommunication Services via the Licenced Telecommunication System. For the avoidance of doubt a subscriber does not include users of pre-paid services;

“Subsidiary”: means Subsidiary as defined in Article 2(1) of the Companies (Jersey) Law 1991;

“System”: means, in this document, a device for the origin and completion of telecommunicated messages;

“Telecommunications (Jersey) Law”: means the Telecommunications (Jersey) Law 2002;

“Telecommunication Services”: means the provision of any Telecommunication Services to the public;

“Term”: means, subject to Condition 11, a period ten (10) years from the Licence Commencement Date;

“User”: means a person, organization or other entity that is a consumer of Telecommunication Services.

1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:

- (a) references to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
- (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions, and reference to such a document is to that document as varied from time to time;
- (c) headings used for conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
- (d) references to any law, rule, regulation, ordinance, order or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;

- (e) use of the word "includes" or "including" should be construed as being without limitation; and
- (f) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

PART I: ESTABLISHMENT AND ENFORCEMENT

2. SCOPE OF THE LICENCE

- 2.1 This Licence authorises the Licensee to run, (including establishing, operating and maintaining) a Public Telecommunication System (including but not limited to the provision of ISP services) in the Bailiwick of Jersey for the Term.
- 2.2 For the avoidance of doubt, this Licence shall be non-exclusive.
- 2.3 The Licence is personal to the Licensee and the Licensee shall not:
- (a) sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
 - (b) sell or pledge any of its assets which are necessary to provide the Licensed Telecommunications System which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets, without the prior written consent of the JCRA, such consent not to be unreasonably withheld.

Condition 2.3 does not apply to:

- (i) *a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or a Subsidiary of the Licensee, being borrowings for the purpose of the Licensed Telecommunications System or the provision thereof or anything incidental thereto; or*
 - (ii) *a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence; or*
 - (iii) *a transfer, assignment or other disposal of assets made in the ordinary course of business.*
- 2.4 Subject to Condition 8 the Licensee shall notify the JCRA of the occurrence of any of the following:
- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Licensed Telecommunications System which may detrimentally affect the permanence, availability or quality of the Licensed Telecommunication System or Telecommunications Services;
 - (b) an insolvency-related event in respect of the Licensee or a Subsidiary of the Licensee or a joint venture, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.

- 2.5 The Licensee shall notify the JCRA:
- (a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and
 - (b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty (30) days of that event.

- 2.6 On receipt of notification of Change of Control the JCRA may:
- (a) approve, in writing, the change or the proposed change;
 - (b) disapprove, in writing, the change or the proposed change, giving reasons; or
 - (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 18 of the Telecommunications (Jersey) Law,

and, or in addition to any of the above measures, the JCRA may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the JCRA considers necessary or appropriate.

In taking action under this section, the JCRA may have regard to whether or not the JCRA would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

- 2.7 In this Condition 2, “Control” shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event. A person or group of persons shall be deemed to Control the Licensee if:

- (a) he or they exercises or controls the exercise of fifty (50) per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or
- (b) he is or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters or is able to appoint or remove a majority of the governing body of the Licensee; or
- (c) he or they exercises or controls the exercise of fifty (50) per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and “Change of Control” shall mean any change as a result of which any other person or group of persons acquires Control.

- 2.8 The Licensee shall supply to the JCRA, in relation to itself and any Subsidiary company which is controlled by the Licensee and any Associated Company of the Licensee:
- (a) a copy of its annual return on the same date on which it is required to be filed in accordance with the Bailiwick of Jersey Law;
 - (b) a copy of its annual report and accounts on the same date on which it is circulated to the shareholders of the relevant body corporate; and
 - (c) in relation to any Subsidiary company and Associated Company of the Licensee where the relevant body corporate is not incorporated in the Bailiwick of Jersey any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the JCRA reasonably required, and which are analogous or equivalent to annual return and annual report and accounts, at such times and in such forms as the JCRA directs from time to time.
- 2.9 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or Licences as may be necessary for the provision of the Licensed Telecommunications System and for the exercise of its rights or discharge of its obligations under this Licence.
- 2.10 The Licensee shall ensure that:
- (a) the administration and management of the business associated with the running (including establishment, maintenance and operation) of the Licensed Telecommunications System shall be conducted from the Bailiwick of Jersey; and
 - (b) its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or Subsidiaries or joint ventures.

3. LICENCE FEE

- 3.1 The Licensee shall pay the Licence Fee in the manner directed by the JCRA.
- 3.2 Without prejudice to any other remedies of the JCRA under this Licence or the Laws, if the Licensee fails to pay any amount due to the JCRA under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four (4) percentage points above the published base rate of the Bank of England.

4. PROVISION OF INFORMATION

- 4.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other information (whether financial, operational, technical or otherwise) including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.
- 4.2 The Licensee shall, within ninety (90) days of the Licence Commencement Date, provide the JCRA with a comprehensive report on its use of the radio frequency spectrum, and the anticipated future use, and provide updates on the report as requested by the JCRA from time to time.
- 4.3 The JCRA may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licensed Telecommunication System or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may issue directions with regard to the manner in which such an examination, investigation or audit is carried out, including the creation of financial and/or technical specifications or documentation.
- 4.4 In particular, the JCRA may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Licensed Telecommunication System to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its Subsidiaries or Joint Ventures control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its Subsidiaries or Joint Ventures, as may be required in order to carry out the examination, investigation or audit.
- 4.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.

5. COMPLIANCE

- 5.1 In addition to the Conditions, the Licensee shall comply with:
 - (a) any obligation imposed on it by the Laws or by any law, regulation, rule, ordinance or order; and
 - (b) any direction duly issued by the JCRA under the Laws or by any law, regulation, rule, ordinance or order of the States of Jersey or this Licence.

6. MODIFICATION

- 6.1 The JCRA may from time to time modify, delete or add to any condition in this Licence. Any modification, deletion or addition to the Conditions shall be made in accordance with Article 18 of the Telecommunications (Jersey) Law and any other requirements under any applicable Law.

7. ENFORCEMENT AND REVOCATION

- 7.1 The JCRA may at any time revoke this Licence in accordance with the provisions and procedures set out in Articles 19 and 20 of the Telecommunications (Jersey) Law. The JCRA may also take any action to enforce any Condition of this Licence in accordance with Article 19 of the Telecommunications (Jersey) Law or any direction issued relating to this Licence.

8. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS

- 8.1 If the Licensee is prevented from performing any of its obligations under this Licence because of force majeure:
- (a) the Licensee shall notify the JCRA of those obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
 - (b) the JCRA may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the force majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources, work-around plans or other means.

9. INTEGRITY OF THE NETWORK

- 9.1 The Licensee shall take all reasonable steps to ensure the integrity of the Network and may refuse to provide the Telecommunication Services to a particular User if providing those Services would or would be likely to cause damage or interference to the Licensed Telecommunications System.
- 9.2 The Licensee shall provide details with regard to any proposed refusal to the JCRA. The JCRA shall issue a determination on the matter.

10. MATTERS OF INTEREST TO JERSEY

- 10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Licensed Telecommunication Systems take reasonable steps to prevent any Telecommunication Services from being used in, or in relation to, the commission of offences against the laws of the Bailiwick of Jersey.
- 10.2 The Licensee shall establish and maintain the capability to intercept Messages transmitted over the Licensed Telecommunication System and to provide information regarding the use of Telecommunication Services, in order to be able to meet the requirements of the Bailiwick of Jersey Law.

11. TERM AND RENEWAL

- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws and subject to any revocation or suspension by the JCRA, for the Term.

12. MISUSE OF DATA

- 12.1 The Licensee shall not make use of network or traffic data, traffic profiles or any other data of any nature which become available to it directly or indirectly as a result of entering into Interconnection arrangements or otherwise as a result of carrying Messages, in any way which, in the reasonable opinion of the JCRA, would unduly prefer the interests of any business carried on by the Licensee or an Associated Company of the Licensee, or place Other Licensed Operators at an unfair disadvantage.

PART II: PUBLIC SERVICE CONDITIONS

13. CONSUMER PROTECTION

- 13.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish the standard terms and conditions, including tariffs under which it provides each category of Telecommunication Services to Subscribers and Users. In the absence of any other direction from the JCRA, the Licensee shall ensure that a current statement of all applicable terms and conditions is:
- (a) filed with the JCRA; and
 - (b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post on request.
- 13.2 The JCRA may direct the Licensee to change the Licensee's standard terms and conditions from time to time.
- 13.3 The Licensee shall safeguard the privacy and confidentiality of all Messages transmitted over the Licensed Telecommunication System and the Telecommunication Services provided shall comply with all applicable laws from time to time regarding the protection of personal data and shall comply with any directions issued by the JCRA for the purposes of protecting the interests of its Subscribers or Users.
- 13.4 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA for the resolution of disputes.