



**Invitation to Tender for the Review of Jersey Telecom
Limited's Reference Interconnect Offer Pricing**

23 November 2010

Introduction

Jersey is a self-governing British Crown Dependency with its own legal system, but its international representation and defence are ordinarily conducted by the government of the United Kingdom. Jersey is not part of the European Union ('EU'), but it has a special relationship with the EU and certain European legislation applies in accordance with Protocol 3 to the 1972 Treaty of Accession under which the United Kingdom joined the European Communities. The government authority is the States of Jersey.

Jersey Telecom was a States department that provided the monopoly telecommunications service. The States introduced the Telecommunications (Jersey) Law 2002 ('the Law') that enabled the Jersey Competition Regulatory Authority ('JCRA') to licence and regulate telecommunication providers in Jersey. Prior to the full implementation of the law Jersey Telecom (JT) was incorporated into a limited liability company under Jersey law, the States retained 100% of the share capital. Since 1 January 2003 JT has lost its statutory monopoly and now faces competition in all telecommunications markets. Nevertheless, it remains the dominant provider of fixed network communications, where there is virtually no infrastructure competition, and retains a strong market position in the mobile sector following the introduction of competition in that sector.

The JCRA is required under the Law to ensure that consumers in Jersey have their demands for telecommunications services met in the most efficient way, in particular by promoting competition where appropriate. To this end the JCRA has licensed other operators ('OLOs') to provide competitive and innovative services within the island. In addition, the JCRA can impose special requirements on telecommunications operators through licence conditions when an operator has Significant Market Power ('SMP'). Licensees have the right to interconnect to other networks. In order for the JCRA to properly evaluate whether the terms of such access are fair and equal and do not involve cross-subsidisation, undue preference, an abuse of SMP or any other form of anti-competitive conduct, a Licensee with SMP must maintain separated accounts to enable the JCRA to separately identify the relevant economic costs of various commercial activities of concern.

Under the terms of its licence issued by the JCRA, JT as a Licensee with SMP in certain markets¹ is required to provide to the JCRA separated accounts ('SA') in order to determine the costs and prices of certain products, in particular the costs and prices of wholesale products offered by JT to OLOs through its Reference Interconnect Offer ('RIO') or otherwise. The JCRA conducted a review of the JT Separated Accounts² and the resulting documents were the subject of a consultation in August 2009. As a consequence of this review the current submission of the SA is now available to the JCRA. It is proposed to use these accounts to review the pricing of the products in the JT RIO. A separate review of JT's Separate Accounts is also being

¹ Review of the Telecommunications Market in Jersey – available at: http://www.jcra.je/pdf/091127_Telecommunications_Market_Review_consultation_t-3.pdf

² Review of the JT Separated Accounts and Wholesale Access Provisions – available at: http://www.jcra.je/pdf/091127_Telecommunications_Market_Review_consultation_t-3.pdf

conducted at this time and interested parties may wish to familiarise themselves with the terms of that review and it is expected that there will be outputs from that work by March 2011.

The JCRA is inviting qualified parties to tender for this work programme.

Background

In August 2008 JT produced a revised RIO pricelist which was based on its then current Separated Regulatory Accounts. The JCRA permitted some of the changes subject to the review of the JT Separated Accounts as outlined above. However, after the publication of the revised rates, the JCRA received a number of objections from other operators and the rises were effectively held and the balance between the old and new rates were kept in an escrow account managed by the JCRA. The JCRA wishes to ensure that RIO rates are based on efficient costs and are properly calculated.

Reference Interconnect Offer

JT is required under the terms of its licence to provide interconnection between it and OLOs who request such an interconnection. It has had a Reference Interconnection Offer (RIO) in the market since 2005, however, certain of its pricing was formerly set by the JCRA Price Cap Direction³ of 2004 as a consequence of the unavailability of an adequate RIO, but the JCRA excluded RIO interconnect pricing from its 2008 retail Price Cap Direction⁴ and consequently JT's RIO prices have been set by reference to its separated accounts. The JT RIO, which includes all current tariffs is available on its website⁵.

As a result of a review of the JT submission for new pricing in its RIO and also as a consequence of the JCRA's review of the JT separated accounts, the JCRA is of the view that the methodology adopted by JT in setting its prices for the RIO should be reviewed.

Interconnection Pricing

In August 2008 JT applied to the JCRA to revise its termination rates on both fixed and mobile networks. The JCRA objected to the methodology used to determine the mobile termination rate ('MTR') increase and so it was subsequently not changed from the 2004 level. Despite its reservations on the accuracy of the JT SA, the fixed termination rate ('FTR') was increased based on the JT Metify calculations. However, the OLOs objected to the new FTRs and thus the JCRA temporarily placed these increases in Escrow subject to a full review of the JT RIO.

³ Price Cap Decision Paper and Direction 2004-2 – available at: <http://www.jcra.je/pdf/040429 Decision re Consultation on Price Control of JT .PDF.pdf>

⁴ Decision Paper and Determination T2008-1 – available at: <http://www.jcra.je/pdf/080915 Decision re Consultation on Price Control FINAL.pdf>

⁵ JT RIO available at: <http://www.jerseytelecom.com/templates/LayoutB.aspx?id=663>

FTR

The FTR is applied to all local OLO terminations and is not the same as applied to traffic originating off-island. The JCRA has no interest in the off-island termination agreements between JT and its partners. In this new review all termination and transit rates within the JT RIO shall be re-examined and suitable rates proposed by the successful tenderer. A suitable model shall be constructed that is forward looking, that is to say a model that will still be valid when the JT migration to NGN has been completed. Alternatively a suitable separate model suitable for the NGN may be provided. The FTR is also mirrored in the JT call origination rate.

MTR

As noted above the MTR has remained the same since 2004. At the time of the introduction of the current rate JT was the only mobile operator in the market. Subsequently two new operators have entered the market. Currently each operator applies symmetrical MTR charges although this is not a regulatory requirement. Although JT retains the largest mobile provider in terms of active SIMs, the JCRA market review concluded that it no longer had the ability to act independently of the other operators in setting prices, particularly at the retail level. However, it still retains SMP in termination on its own network and consequently acts as a price leader in this market.

The JCRA is of the view that as the mobile market matures the traffic between mobile networks will tend toward equilibrium and thus the need to recover costs at this level is overshadowed by the administrative overhead. Therefore a suitable long term strategy should be recommended.

The JCRA expects the successful tenderer to advise on the most appropriate methodology for setting MTR's in Jersey bearing in mind the scale of the operators and whether using the incremental cost principle model taking into consideration the new EC recommendation⁶ and recent relevant regulatory (e.g. OfCom) decisions is considered appropriate.

Other local termination and transit rates

The same principles as outlined above should be applied to determine the appropriate rates for the remaining services within the JT RIO.

Interconnecting Link Services

JT provides a range of Interconnect Links based on legacy SDH products. Subsequent to the revisions to the JT SA, the JCRA wishes to review these costs and to determine whether the current tariffs are appropriate.

⁶ COMMISSION RECOMMENDATION of 7 May 2009 on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU (2009/396/EC)

Key Deliverables

In addition to the public domain statistical information that is referenced in this document, the JCRA will make available to the successful tenderer the requisite information necessary to complete this work. As a nominated JCRA consultant the successful tenderer will be expected to work with all stakeholders. It will also have access to the relevant personnel and data within JT.

It is envisaged that the tenderer will work closely with the JCRA and provide suitable feedback during the process. It is assumed that this project will commence in April 2011. The JCRA therefore requires:

1. Within 4 weeks of the start of the project an initial report on its observations on the calculation by JT of its RIO rates. This report will comment on the current arrangements in JT for setting RIO rates. The report will also review the that cost allocations are relevant within each product;
2. In the event that it is determines that JT's current calculation of RIO rates is non-standard, the successful tender will propose revised RIO rates for all services. This is to be completed within 10 weeks of the project commencing.
3. To the extent necessary, the successful tender will make recommendations on any changes needed to the cost model(s) used by JT to determine RIO rates.
4. The final Report shall be provided 12 weeks after the project commences.

Evaluation Criteria of the Tender Documents

The tenders shall be assessed using a mix of the following criteria:

- Relevant experience
- Quality of the team
- Value for money
- Proposed process outlined in the tender response

The JCRA shall conduct this evaluation process in-house.

Technical Contact

All queries relating to this ITT should be addressed to:

Graeme Marett
Phone: +44 1534 514996
Email: g.marett@jcra.je

Tender Instructions

Invited parties shall respond, in writing, within 7 days of the receipt of this document stating whether or not they wish to proceed with the tender.

Uninvited tender responses from the JCRA website posting shall also confirm in writing the intention to proceed.

Submitted tenders shall be valid for a period not less than 30 days from the closure date of the tender.

The tenderer shall provide a named contact together with contact details to the JCRA as part of the tender document.

The JCRA reserves the right not to accept the lowest or any tender and at its sole discretion may optionally retender for the programme of work after the closure date.

The tenderer shall provide to the JCRA any reports in both printed and electronic format.

The JCRA standard terms and conditions for tenders are available as a separate document but should be read in conjunction with this tender request.

Completed tenders should be addressed to:

Graeme Marett
JCRA
2nd Floor Salisbury House
1 – 9 Union Street
St Helier
Jersey CI
JE2 3RF

g.marett@jcra.je

www.jcra.je

Closure date for tenders:

Tenders must be received by 5:00pm 17 December 2010 at the JCRA office.

Terms of Tender

Deliverables

All deliverables shall be in English.

A DRAFT report shall be submitted to the JCRA after completion of the programme of work. The JCRA shall provide comments to the tenderer, where appropriate, after receiving the draft report, enabling the tenderer to complete the FINAL REPORT.

The final report shall be provided to the JCRA in both hard copy and electronic formats.

Qualifications

The tenderer shall provide to the JCRA with the tender document relevant previous experience of this class of audit work.

The tenderer shall provide the experience of the members of team that shall be employed on this project including the CVs of the team members.

Confidentiality

The tenderer shall be required to sign a confidentiality agreement with the JCRA not to disclose to a third party any data received with or obtained from the review.

Terms

The tender shall provide the following information:

1. Tenders are required to submit a fixed price contract. All costs shall be expressed in Pounds Sterling;
2. The projected timeline of the programme of work;
3. A clear statement that the tenderer has no conflict of interest with any other relevant party on the Island of Jersey, and/or that it shall not place itself in such a position during the completion of the programme. The tenderer shall disclose to the JCRA any matter which in its view may breach such a conflict of interest;
4. A breakdown of costs for the programme of work shall be provided at the end of the contract in sufficient detail that the JCRA may determine where any additional invoiced costs have been incurred;

5. Value Added Tax is not applicable to work carried out on the Island of Jersey;
6. The terms of payment for the completed work.
7. The tenderer understands that final report produced for the JCRA shall become the intellectual property of the JCRA.