



# Jersey Telecom Gigabit Isles Compensation for enforced router replacement

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## Consultation Document

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## 1. Introduction and background

DSL services, based on the existing copper local loop infrastructure, were introduced to Jersey in the early 2000s and a regulatory wholesale/retail regime was developed to ensure multiple service providers could compete with JT on a non-discriminatory basis. It was generally expected that customers would acquire and own their own routers; albeit this might have been via special offers and free routers supplied by the service providers as an inducement to take their service. As a rule service providers have not attempted to recover routers from customer that cease service or switch to another service provider; rather they recover the cost through minimum contract periods in their terms and conditions.

In 2010, JT Networks announced its intention to convert the whole of Jersey's copper local loop to fibre-optics; a programme that was initially expected to run until the end of 2016. Existing broadband routers, designed for the copper based DSL services, do not work with the fibre-optic network and require replacement with fibre-optic compatible, high speed routers.

In recognition that the decision to migrate to fibre-optics is JT Networks', and that the customer is being required to replace their broadband router, it has been previously agreed that JT Networks would pay compensation for the enforced router replacement.

The present arrangements are however a cause for concern in the industry. Given the progress of the rollout it is essential that the arrangements are fair to consumers and do not harm competition. This paper sets out the present arrangements and the key principles that in CICRA's view need to be applied to ensure such outcomes. It may be that formal intervention is required to ensure sound principles are observed in terms of how the broadband router compensation work in practice. This consultation initiates formal consideration of such issues given considerable concern in industry about the present arrangements.

## 2. Structure of the Consultation

Section 3	Sets out the existing fibre router compensation arrangements.
Section 4	Provides a case for regulatory intervention given issues arising in the market.
Section 5	Sets out CICRA's assessment of the scale of the potential issue.
Section 6	Considers the principles underlying compensation payment with the arrangements and the advantages and disadvantages of different possible schemes.
Section 7	Proposes an alternative compensation scheme to address the weaknesses of the current arrangements.
Section 8	Proposes CICRA's role in the settlement processes.
Section 9	Sets out next steps of the consultation.
Annex A	Sets out a proposed alternative compensation scheme (available on request).

Interested parties are invited to submit comments to CICRA in writing or by email on the matters set out in this paper to either of the addresses below.

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All comments should be clearly marked "Consultation on compensation for enforced router replacement" and should arrive by 5pm on 30 April 2015.

### 3. Operation of the October 2013 agreement in practice

Compensation by JT Networks is provided due to the fact that routers for DSL (copper broadband) services do not work on broadband delivered by fibre networks and the decision to replace copper networks with fibre networks was that of JT Networks. The cost to consumers for replacement routers when they are required to switch from copper to fibre is therefore caused by a decision of JT Networks. This is the fundamental basis for JT Networks' compensation arrangements.

The compensation under present arrangements takes the form of either a Tilgin router (JT Retail's chosen router) or its financial equivalent (agreed at £[REDACTED]). The arrangement was agreed between JT and Sure (Jersey) in October 2013 and CICRA required JT Networks to offer the same compensation arrangements to all retail broadband service providers in Jersey. To ensure the financial compensation is used appropriately, and that other service providers are not unduly enriched through the supply of less capable routers, the JCRA took on the role of arbiter of costs and payments involving JT Networks and broadband service providers.

For the purposes of this paper, the value of the Tilgin router and the £[REDACTED] cash alternative are considered to be equivalent and are referred to as "the compensation".

The October 2013 agreement described above proved to be acceptable at the time because, at the time, all customers being converted from copper to fibre continued to take service from their existing service provider.

JT Retail decided that it would use the Tilgin router option and to provide these routers to its customers as part of its retail service. JT Retail also decided that as part of its retail offer it will retain ownership of the router and require that the router be returned to it if the customer switches to a competing service provider. Other retail service providers are free to make use of the compensation as they see fit; in particular, no part of the agreement dictates what type of router is supplied (thus leaving freedom for service innovation) or whether the service provider retains ownership of whatever router it supplies to the customer. The only requirement of the agreement is that the compensation is used to provide a customer with a suitable router and that that router must be of at least comparable in value to the Tilgin router ([REDACTED]).

Difficulties arose when JT Retail customers, that had been converted from copper to fibre and supplied with a Tilgin router, decided to switch retail service provider. Sure (Jersey) raises the argument that, on losing a customer, JT Retail requires the customer to return the Tilgin router previously supplied, thus effectively keeping the value of the original compensation payment, while Sure (Jersey), or the customer, must provide a new router, at their expense, to enable the customer to obtain service. Sure (Jersey) argues that it and its customers are being financially disadvantaged by this.

Sure (Jersey) further argues that JT Retail's practices are a barrier to customers switching retail service provider because JT Retail requires that the customer physically returns the Tilgin router to JT Retail's premises in St Helier or pay its value. Sure (Jersey) also indicates that no collection or stamped addressed envelope type service is offered by JT Retail to make return of the router simple and convenient for the customer.

There is no suggestion that JT Networks is required to, or would, provide a second compensatory payment to a retail operator that receives a switching customer, whether that be to JT Retail or to another service provider.

**Question 1 : Views are sought on the current compensation and router ownership arrangements, in particular whether there are aspects of the current arrangements that disadvantage users and/or inhibit competition?**

## 4. The need for regulatory intervention

The October 2013 agreement can be viewed as putting all retail service providers in the same position; they all receive the compensation in a form of their choice whenever a copper to fibre-optic conversion is undertaken and they all have the same options as to whether to retain or gift the broadband router to the customer. However consideration of other factors suggests that the situation is more complex than this.

The October 2013 agreement makes provision for the compensation to be paid to the customer's retail service provider, which it is free to keep, even though in many cases the customer paid for the original DSL router. The compensation is therefore not going directly to the disadvantaged party and when a service provider requires the router to be returned to, for example when it loses that customer to another service provider, it is in effect retaining the compensation.

Also, JT Retail's requirement that, on switching away, the customer must return the supplied router, or pay its value, is likely to be perceived by customers as a disincentive to switching unless the new service provider provides a replacement router. Since the new service provider will not receive a second compensatory payment from JT Networks it will be required to decide whether to provide a router at its own expense (possibly recovering the cost through higher charges over the period of the contract) or risk not being able to persuade the customer to switch as the customer would need to fund a new router. Issues of margin squeeze are being addressed by other CICRA work but for current purposes it appears that a new service provider charging for the new router risks making its offering less attractive or, if it chooses to absorb the cost, reduce its profitability.

It appears to CICRA that in these circumstances a consumer taking its broadband service from JT Retail faces material disincentives to taking advantage of competitive choices. The customer cannot take advantage of available choices without facing additional costs, either directly or indirectly, for the replacement router. The customer also faces other transaction costs in having to return the Tiljin router to JT Retail.

In CICRA's view JT Retail's policy of requiring customers to return the originally supplied Tiljin router to its premises appears to present a material disadvantage to customers and can be seen as a disincentive to switching.

## 5. Materiality of the issue

Market analysis undertaken by CICRA indicates that there were approximately 34,000 fixed-line broadband customer in Jersey at the end of 2012 and approximately 35,000 at the end of 2013. The total cost of the compensation scheme to JT Networks is therefore conservatively estimated at c£[REDACTED]m (c35,000 x £[REDACTED]).

In August 2014 JT announced that it had converted the first 10,000 of Jersey's broadband connections from copper to fibre-optic; approaching one third of the total Jersey broadband subscriber base.

CICRA's market analysis also indicates that, at the end of 2013, Jersey broadband customers are distributed between the various retail service providers as follows: JT 76%, Newtel 13%, Sure 11% and Airtel 1%.

It is unclear what proportion of these market shares have been achieved by retail operators signing customers when the customer took their first, copper based DSL, service or whether there has been significant switching between service providers post initial service provision. The need to resolve any features of the compensation scheme that risk consumer detriment and/or unfair competition at this stage of the fibre rollout programme is undoubtedly critical with the materiality of the issue likely to grow in importance. It would not be acceptable for competition to be restricted by the actions of JT either as a network provider or as a retail provider where it has a significant position of market strength and has an incentive to retain that position at the expense of its competitors and consumers.

Given other activities in the Channel Islands' telecommunications market, such as wholesale line rental which is due to be introduced mid-2015, it can be expected that the pace of switching will increase as service providers seek to increase market share through bundling and other competitive offers. In such an environment the question of router ownership is likely to become more prominent.

This view is supported by CICRA's latest broadband customer satisfaction survey which found that 13% of those surveyed had changed service provider in the previous six to twelve months and that 48% suggested that they would be likely, or very likely, to change service provider in the future. Even at 13% the value of routers involved is c£[REDACTED]K per annum.

In order to encourage market development, CICRA wishes to ensure that consumer switching is made as simple as possible and that barriers to switching are eliminated, or at least minimised. CICRA considers that the value of routers is a material issue and consideration needs to be given to the effect of the current arrangements and JT Retail's approach to switching. This view is further reinforced by the potential inconvenience to customers of being required to return Tilgen routers to JT when switching away from JT Retail.



## **6. Examination of principles associated with compensation payments**

In CICRA's view the underlying purpose of the router compensation scheme is to ensure that retail service providers and consumers are not disadvantaged by JT Networks' decision to convert its copper local loop to fibre optics.

This section examines issues relating to how such compensation is applied. In doing this CICRA recognises the potential for unintended negative consequences and the need to avoid those in any alternative scheme.

### **6.1 Compensation paid to the property**

Given that the change in the local loop physically affects the property, the compensation could be made to the property owner and therefore have stayed with the property. As such it would not be subject to changes in occupier/customer or retail service provider.

However, this involves JT Networks engaging in financial arrangements with property owners who are also likely to be the customers of the retail service providers. This presents a number of complications involving vertical integration in the market as well as a change to the existing wholesale/retail regime which would have far reaching consequences for many aspects of the telecommunications market's regulatory regime.

Issues might also arise regarding where the boundary of the JT Network is; at the Optical Network Termination point or at the customer's broadband router.

CICRA recognises that JT Networks being involved in providing a physical router to the end customer has other disadvantages. For example, a customer might move from property with a fibre connection to a property with a copper connection and the fibre router is no longer suitable. Also, by having JT Networks specify and supply the router in all circumstances there is potential for limiting the opportunities for technical and commercial innovation by service providers.

A scheme that does not alter the legal boundaries of networks or destabilise the established regulatory regime is therefore preferable.

## **6.2 Compensation paid to the retail service provider**

Payment to the service provider is the basis of the October 2013 agreement and has led to the issues describe in section 3 above. However, its advantage is that the service providers are sufficiently well resourced to deal with the financial and technical issues associated with the broadband market and it is in their interest to ensure that compensation payments are used for the purpose for which they were intended; i.e. the provision of suitable broadband routers.

## **6.3 Compensation paid directly to the customer**

Given the history of DSL router provision whereby, in general, routers are owned by the customer, it is CICRA's view that it is the customer that should be the one that receives the benefit of any compensation which is being paid as a consequence of JT Networks' decision to convert to a fibre-optic based local loop.

However, CICRA recognises that with simple cash payments from JT Networks to the end customers, so that the customer can purchase their own router from the open market, there can be no guarantee that the customer will obtain a suitable router (even if an approved list of routers is provided) and the complexity and issues that might arise could lead to outcomes no better than the current arrangements.

## **6.4 CICRA's view on who the compensation should be paid to and how**

CICRA takes the view that the compensation should be paid for the benefit of the end customer rather than the service provider. However, CICRA also takes the view that service providers are best placed to administer any scheme, thus ensuring that it is managed in an efficient manner and that compensation payments are used for their intended purpose.

## **6.5 Issues associated with identifying the customer**

In terms of who is being compensated for having to replace the router, a method would be to compensate the person that is the bill payer at the time of conversion to fibre and who can be assumed to be responsible for the financial aspects of the broadband service.

However, the identification and tracking of the "customer" as an individual person is a notoriously difficult activity in large scale utility environments where IT systems tend to model concepts such as account number, property address and exchange line number. This is compounded by issues such as the bill payer might not be the occupier or the owner of the property or the person that has purchased the original DSL router.

CICRA takes the view that it would be unreasonable for current purposes to expect service providers to modify their customer administration and billing systems to be able to model and track new concepts such as customer as an individual person and, therefore, some proxy is required.

CICRA proposes that exchange line number be used as a proxy for the customer identity. This proposal is based on :

- the exchange line number is not permanently associated with the property and is increasingly associated with the customer; indeed people that move premises often take their number with them to their new premises;
- the bill payer for the exchange line changes infrequently;
- the exchange line number is already successfully used in the broadband switching process;
- the exchange line number is readily available in existing IT systems;

**Question 2 : Respondents are asked for their views on the above options or any others? Their views on the advantages and disadvantages of such alternatives are welcomed to assist CICRA in forming its views.**

**Question 3 : Respondents are asked for their views on how customers, to whom compensation payment are due, are identified and tracked? If respondents feel exchange line number is an unsatisfactory proxy for the customer then what alternative would they suggest and why?**

## 7. Proposed alternative compensation scheme

The October 2013 agreement has proved to be unsatisfactory to any service provider that must provide a fibre router without the benefit of JT Networks' compensation payment. This is due in large part to the agreement having been introduced to resolve issues at a time when the existing customers of service providers were being converted from copper to fibre and those customers were not immediately switching service provider. The matter of how the current arrangements work for customers switching between service providers has grown as the fibre network has been rolled out across Jersey and the issue of switching increasing in importance.

### 7.1 Proposed alternative scheme

Annex A of this consultation describes an alternative scheme which CICRA believes :

- restores the situation in which compensation is paid for the benefit of the customer that has been disadvantaged by JT Networks' decision to move from a copper to a fibre optic based access network;
- takes account of switching as well as new copper to fibre conversions;
- ensures that no party is unduly enriched and no service provider is financially disadvantaged; and
- minimises barriers to switching that result from router ownership issues.

The key points of the proposed scheme are:

Initial compensation payment by JT Networks	As in the October 2013 scheme, payment (in the form of a Tilgen router or monetary equivalent) is only made when JT Networks converts an existing broadband subscriber from copper local loop to fibre. For the avoidance of doubt, the party that requests the conversion is irrelevant.
Beneficiary	The compensation payment is made by JT Networks to the customer's service provider at the time of copper to fibre conversion but the service provider is required to apply the compensation for the benefit of the customer's broadband service; typically in the form of the provision of a suitable router. The payment is made to the service provider on the basis that service providers are responsible parties that can manage and account for the payments on behalf of customers.

On switching service provider In the event that a broadband customer switches service provider, the service provider losing the customer pays the service provider gaining the customer the depreciated value of the compensation payment. If no compensation payment was made for the customer then no transfer payment is due.

This requires that the service provider losing the customer declare to the new service provider that some residual compensation payment is available.

On cease of broadband service In the event that a customer for whom a compensation payment has been made ceases their broadband service (on the exchange line number) then the depreciated value of the compensation payment is returned to JT Networks by the service provider serving the customer at the time of the cease.

## **7.2 Depreciating the value of the compensation payment**

It is already established that the value of the compensation payment at the time a copper to fibre conversion is made is £[REDACTED]; being the cost of a fully configured Tilgin router. However, routers have a finite life and it is reasonable that the value of the compensation payment should be depreciated, and written off, over some finite period.

It will be seen that the router compensation scheme put forward in Annex A of this paper has the depreciated value of the compensation payment being passed between service providers whenever a customer switches service provider.

CICRA proposes that a straight line depreciation method be used with the value of the router compensation being fully depreciated over four (4) years. This equates to approximately £[REDACTED] per month or approximately [REDACTED] per week.

**Question 4 : Respondent's views are sought on the need to depreciate the value of the compensation payment, the period over which the compensation payment should be depreciated and the depreciation method.**

**Question 5 : Respondent's views are sought on the compensation transfer scheme presented by this paper. Reasons should be provided for any suggested changes or alternative approach.**

## 8. Settlement periods and process

Part of the October 2013 agreement is that the JCRA should act as an independent and confidential agency for collating service provider fibre router costs and reconciling those with the value of the compensation payments made by JT Networks. Data is collected from service providers on a half yearly basis and there is to be a one-time financial adjustment at the end of JT Networks' copper to fibre conversion programme. The data collection aspects of the agreement are currently in place with data being collected as agreed.

Given the compensation payment transfer scheme described in Annex A, the current one off settlement process appears out of step with the dynamic nature of the market. CICRA therefore proposes that the settlement process is modified as follows:

1. The JCRA will continue to collect data from service providers on the numbers and value of fibre routers they supply to customers and the value of the corresponding compensation payments made to the service provider by JT Networks. The JCRA will use this data to monitor and compute adjustments for any under or over payments made by JT Networks.
2. Data is to be provided to JCRA by service providers on a quarterly rather than half yearly basis so that activity in the market can be monitored effectively and any issues can be resolved in a timely manner.
3. Settlement will be on a quarterly basis rather than as a one-time activity at the end of the JT Networks copper to fibre conversion programme. This adds certainty about when settlements will be made.

It is to be noted that at some point in the future JT Networks will reach the end of its copper to fibre conversion programme and at that point no more compensation payments will be made to service providers. The settlement scheme will then come to an end.

Further, at some point after the end of JT Networks' copper to fibre conversion programme, all compensation payments will become fully depreciated and the scheme for the transfer of depreciated compensation payments between service providers will also come to an end.

**Question 6 : Respondent's views are sought on the continuing need for a settlement scheme and whether JCRA should play the role suggested above. If respondents disagree with the proposed scheme they should give their reasons and make alternative proposals.**

**Question 7 : Respondents are also asked for their views on what role, if any, JCRA should play in monitoring, or even participating, in the scheme described in Annex A for the transfer of depreciated compensation payments when customers switch service provider.**

## **9. Next steps**

In line with CICRA's consultation policy, it intends to make responses to the consultation available on the CICRA website. Any material that is confidential should be put in a separate annex and clearly marked as such so that it may be kept confidential. CICRA regrets that it is not in a position to respond individually to the responses to this consultation.

**ANNEX A. Life cycle of a customer's broadband service & associated router compensation transfers**

This annex is available separately on request.