



Jersey Telecom Gigabit Isles Compensation for enforced router replacement

Final Notice

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Contents

1. Executive Summary..... 3

2. Background 3

3. Structure of the document 4

4. Responses to the Initial Notice 4

 4.1 Response from Sure (Jersey) Limited..... 4

 4.2 Response from JT 5

5. Final Notice 6

1. Executive Summary

Following its April 2015 consultation¹ and October 2015 Initial Notice² the Jersey Competition Regulatory Authority (“JCRA”) is issuing this Final Notice with regard to compensation to customers for the forced replacement of their broadband routers and the ability of other service providers to use the routers, originally supplied by JT (Jersey) Limited (“JT”), when a customer decides to switch service provider.

The Direction applies to the market for access to the public telephone network at a fixed location for residential and non-residential customers.

The Direction requires JT to continue making such compensation payments, to set out the formal arrangements regarding possession of routers when a customer switches service provider and to ensure that a new service provider can make use of the router at no additional cost. This is done to ensure the benefit of the compensation payment to the customer remains with the customer after they have switched broadband provider and that access to a router is therefore not a barrier to switching service provider.

The decision to move to a formal decision on this matter is to ensure all parties benefit from a process that ensures trust, that the current voluntary arrangement is enforceable and to provide additional assurance to all parties, including consumers.

2. Background

DSL services, based on the 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. In providing such service it was 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 customers 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. Since the existing broadband routers, designed for the copper based DSL services, do not work with the fibre-optic network they require replacement with fibre-optic compatible, high speed routers.

In recognition that the decision to migrate to fibre-optics was JT's (in particular that of JT Networks), and that the customer is being required to replace their broadband router, JT Networks pays compensation for the enforced router replacement.

¹ CICRA 15/13. Jersey Telecom Gigabit Isles Compensation for enforced router replacement

² CICRA 15/45 Jersey Telecom Gigabit Isles Compensation for enforced router replacement – Initial Notice

JT's competitors have however raised concern around JT's initial decision to require the routers to be returned to it when a customer switches service provider. Given the risk that the arrangements may not be fair to consumers and harm competition, JCRA issued a consultation on the matter in April 2015 (CICRA 15/13).

Following consideration of the responses to the consultation, in October 2015 the JCRA issued an Initial Notice (CICRA 15/45) of its intention to issue Direction to JT in this matter.

Responses to the Initial Direction were received from Sure (Jersey) Limited and JT; these responses, together with the JCRA's views are summarised below.

This paper constitutes a Direction to JT under Article 16 (3) (c) of the Telecommunications (Jersey) Law 2002, as amended, (the "Law") in relation to Condition 34.1(c) of JT's Class III telecommunications licence and is a Final Notice under Article 11 of the Law.

3. Structure of the document

The document sets out the conclusions which the JCRA has reached, having taken full account of responses to the consultation and the Initial Notice and having carried out further research to ensure it has addressed respondents' points. The document contains summaries of particular points raised to illustrate the JCRA's reasoning and is structured as follows:

Section 4	Sets out the responses to the October 2015 Initial Notice.
Section 5	Sets out details of JCRA's Direction to JT.

4. Responses to the Initial Notice

4.1 Response from Sure (Jersey) Limited

Sure wishes to ensure that the Direction remains in place until completion of the entire fibre migration programme.

JCRA's view is that this is implicit in the Initial Notice but should be made explicit in the Final Notice. Further, given the lifetime of fibre routers supplied by JT as compensation for the forced replacement of router is expected to be beyond the end of the fibre migration programme, and that there are uncertainties regarding the date when all properties in Jersey will be migrated from copper to fibre, the Direction should remain in place until further notice.

4.2 Response from JT

JT feels that the issuing of a Direction in this matter is unnecessary because in practice it does not require customers to return routers should they switch to other providers.

JCRA's view is that this may not have always been the case and that the issue of fibre router costs is a significant factor when customers decide to switch provider. While welcoming JT's decision not to require routers to be returned, the issuing of a Direction is necessary to provide clarity on the matter for competing operators who require improved business certainty in this area.

JT is concerned that it has contracted with its supplier (Tilgin) on the basis that JT would own the routers and that this Direction undermines this contractual relationship.

JCRA is of the view that nothing in the Direction undermines JT's contractual relationship with its supplier in respect of ownership and that JT continues to own the fibre routers it supplies. For the JCRA, ownership of the router is not at issue, the key issue is whether customers can continue to benefit from the compensation provided when they were required to replace their copper routers and that competition is not undermined by how the compensation works in practice.

JT expresses concerns that the Direction places it at a disadvantage to its competitors in that it is required to leave the fibre routers it supplies with the customer but other service providers are not. Further that it may have to provide a replacement router when a customer switches to it.

JCRA recognises these concerns but Sure's response to the April 2015 consultation indicated that it would leave routers it supplies with the customer. This is in line with the original compensation being for the benefit of the customer rather than the service provider. Sure's practice has therefore not raised issues by JT. Should the practice of other operators be detrimental to consumer interests or competition the JCRA will address that through appropriate regulatory action including through a direction.

JT raises the issue that customers should understand that their routers will not receive the latest software updates once they switch to another service provider and the router is disconnected from their JT management systems.

JCRA recognises this concern but it is a matter for the service providers to design their products and services, to communicate these to their customers and for customers to decide what services they wish to take. To do otherwise would be to inhibit service innovation.

JT raises the issue that as part of the agreement made with Sure in October 2013, Sure would provide the JCRA with sufficient information that, at the end of the fibre migration programme, the JCRA could ensure that the compensation payments made by JT have been used appropriately.

The JCRA can confirm that information is being provided by Sure in accordance with the October 2013 agreement and that, as an interim measure, it has made enquiries to satisfy itself that it can ascertain how the compensation payments are being used. Further, as part of the April 2013 consultation, the JCRA asked the parties whether they wished to change this aspect of the agreement and neither party indicated that they did. JCRA can see no reason why this aspect of the compensation scheme should affect this Direction.

5. Final Notice

The JCRA directs JT under Article 16 (3) (c) in relation to condition 34.1 (c) of its licence as follows.

1. On conversion of a customer from a copper to a fibre connection, to pay to the broadband service provider providing service to the customer at the time of conversion, a compensation payment (which is to be used to provide a suitable router to the customer) of either a suitable router or equivalent cash value.
2. Change its policy of (in the event that the customer switches to an alternative service provider) requiring the fibre router supplied (when the customer was converted from copper to fibre) to be returned to it; the new policy being that the customer retains possession of the router.
3. Publish detailed and clear instructions for the process by which a broadband service provider can take control of a fibre router so that the service provider can provide service to a customer that decides to switch to them.
4. Update all its sales and marketing material and all communications it makes with its customer to reflect the change of policy.
5. Train and clearly instruct its staff, agents, subcontractors etc. regarding the change of policy and associated processes.
6. Not to impose additional charges in relation to this change of policy or the process of transferring control of routers to other service providers.

This Direction will come into effect on Thursday 14th January 2016 and will remain in effect until further notice.