JT's Response to CICRA Consultation

Variations to Fixed-Term Telecommunications Contracts (CICRA 13/27)

10th June 2013

This response is made by JT (Jersey) Limited and JT (Guernsey) Limited hereinafter jointly referred to as "JT".

Introduction and General Comments

The CICRA has asked for comments on the general issue of variations to fixed term telecommunications contracts by operators together with views on two options that they have proposed; namely a) the introduction of a new licence condition to address their concerns; or b) a direction to operators under existing licence requiring them to amend their current terms and conditions. JT hereby provides its view in this response on the variation to fixed term contracts issue and the options proposed by the CICRA.

Variation to Fixed Term Contracts

1. Ability of Customer to Terminate their Contract when it has been Varied.

JT's terms and conditions of service already contain a Variation clause which provides that the charges, conditions and product description applicable to the service in question may be changed. However, they can only be changed upon giving the current customers concerned one calendar months' notice. Notice can be given by way of a clear statement on the website informing customers of the change. In addition, this information is also available in the retail outlet and other offices of the company upon request. Where changes are made to regulated products, the Licence Condition process of notification via the website and via a Gazette notice in the local press, remains. Further, the Termination clauses within the terms and conditions go on to state that the contract may be terminated by the customer if JT unreasonably exercises its rights of variation under the contract concerned. Therefore, should a customer feel that the variation is unreasonable, they can provide JT with written notice of termination within 14 days of the notice being published.

In addition to the above termination rights, in the event that JT unreasonably varies a contract term or condition, there is also a general right for either party to terminate a contract upon one party giving the other one calendar months' notice in writing (however, it should be noted that should the customer terminate any services whilst within the Minimum Term period then these charges will be raised accordingly. The Minimum Term charge applies to cover the cost of the product (such as Customer Premise Equipment "CPE") or service provided and therefore the customer has contracted on the basis that this minimum cost will be paid, so unless there is a breach of one of the obligations or Conditions of the terms by JT, then the customer remains liable for that contractual price). Notice of termination that has arisen from an unreasonable variation to the charges, conditions or product description would need to remain in written form in order to provide evidence of the customer's requirement to terminate their contract on a particular date.

It is clear therefore that the provisions contained within JT's terms and conditions of service already provide the customer with an option to terminate where it is considered that a variation to the contract has been unreasonably made. In addition, JT does, and has, released customers from contractual obligations in cases where they are unhappy and wish to move operators.

2. Notification of Contract Variation

Changing terms via notices on a website is commonplace, not only in the telecommunications industry, but in any industry where a supplier or professional has a large customer base and where it is impractical and disproportionate in terms of cost and effort to contact each customer individually. The telecoms market is not unique in this regard and it should be noted that this is standard practice, so any change in this respect should be applied to other sectors as well. The CICRA should also consider the cost implications of any changes it proposes and no mention of cost is made in the consultation document. Further, any changes that JT wishes to make to regulated products still require a notice to be placed into the Gazette section of the JEP as well as further information being provided on the website.

Should telecom operators be required to contact every customer and provide notice individually to customers for any product changes, the consequence of this could be that the contract term itself may then need to be fixed for a shorter term in order to allow telecommunication providers to develop and manage their portfolios and have the flexibility to offer different products or packages. Should this be the case, it should be noted that customers would not be able to benefit from lower priced products (such as mobile handsets) over a longer contractual term. This would not be beneficial to the customer and would call into question whether any such direction from CICRA which led to this change would actually be in contravention of Article 7 of the Telecommunications (Jersey) Law 2002, as it would not be in the best interests of users of telecommunications services in Jersey (this of course would also be the case for users in Guernsey).

CICRA Options Under Consideration

Option 1 – Changes to Terms and Conditions

JT believes its current terms and conditions follow the principles stated by the CICRA on page 10 of the consultation document.

Principal 1 – When JT proposes to vary its terms and conditions (e.g. alter the price, remove/add a component of the package) it advises customers one calendar month in advance of the change. JT analyses customer use of the product and decides on the best form of communication with each customer about the variation. This may be by letter, email, text message, or general newsletter and notification is always included prominently on the JT Website one calendar month in advance of the change.

Principal 2 – JT provides in its terms and conditions a right to terminate if JT unreasonably exercises it right of variation. JT often allows customers to terminate their contract if they feel the variation is unreasonable. Of course, where a handset subsidy has been provided then JT will wish to recoup this cost and will discuss this with the customer.

Option 2 – The introduction of a new Licence Condition

The CICRA proposes to use similar wording to that included in Ofcom's General Condition 9.6. JT is concerned by the use of the phrase "without penalty" in 9.6 (b) and would like some clarification around this wording. As previously stated, many customer contracts include an element of CPE, the cost of which is recouped over the period of the contract. JT believes that should a customer wish to exit a contract due to unreasonable variation, the cost of the CPE should be recoverable from the customer before they terminate. 5.1(b) of the consultation makes reference to the customer being obliged to make a payment to the operator in respect of the remaining handset subsidy and JT would want to make sure that any new Licence Condition was worded in such a way as to enable the telecommunications operator to be able to recoup these types of costs when a customer terminates before the end of the minimum contract term.

<u>Other options available to CICRA</u>

The CICRA has another option open to it, which is to specify that the operator's Consumer Code includes reference to the customer's ability to terminate a contract should the operator vary the terms unreasonably and detail the steps the customer needs to take to terminate and the method used to calculate any repayment for CPE or other fixed service element that is part of the contract.

A change to the Consumer Code may make it easier for the customer to understand and would set out a clear process that the customer must follow.