09 October 2009

Jersey Competition Regulatory Authority
Union House
Union Street
St Helier
Jersey JE2 3RF

Attention Graeme Marett Esq
Telecommunications Case Officer

Dear Sirs

Re: JCRA Fixed Line Access Review – Consultation Document 2009-T2

We welcome the Regulaid BV draft report and recommendations set out in the "Review of Jersey Telecoms Ltd's Regulatory Accounts and Access Provisions" dated 17 August 2009.

1. Introduction

Having obtained a licence in 2003 and become one of Jersey Telecom's largest customers via the wholesale services, the report and subsequent proposed actions represent a hugely significant milestone in finally addressing a number of outstanding complaints, particularly in the area of ADSL pricing. Our general comments on the objectives of the report are as follows:

A. Regulation. The Report refers to the dual role of the JCRA as a Telecommunications Regulator and as a Competition Authority. We support the Report's comments in relation to the lack of effective regulation and conclusion that the JCRA needs to embrace and exercise its powers as a regulator. In our view the JCRA has been consistently reluctant over the years to address substantial regulatory issues in parallel with regulators in other jurisdictions. This has enabled JT to maintain its dominant market power to the detriment of the consumer. Greater emphasis should be made on the need for the JCRA and the Economic Development Department ("EDD") to exercise their existing powers. Whether or not the States of Jersey need to amend the telecommunications legislation to strengthen the regulatory powers of the JCRA as recommended in the LECG Report should be determined, but short term regulatory action needs to be taken. To date it would appear that the Regulator has actively avoided situations where it might be required to issue directions, the concern being that the direction will be ignored. This is a very dangerous status quo since it leaves no unfulfilled directions with which to accelerate and prioritise the law drafting process. Ahead of the amendments to the Telecommunications Law, the Regulator must fulfil its obligations to the consumers and other licensed operators by issuing the recommended directions and then dealing with non compliance retrospectively or, as recommended, "ex ante".

B. Review of Jersey Telecoms("JT") Cost Allocations. We are finally beginning to see some progress on the long standing requirement on the part of the JCRA to ensure that JT maintains an accounting system with intelligible and accurate financial allocations. However the information published in the report is redacted and in our view it should be put into the public domain so that it can be scrutinised and commented upon. The recommendations in the Report calling for further work on allocations and analysis need to be implemented urgently.

C. Review of the Range of JT Wholesale Products. We concur with most of the Report's recommendations. However in our view some of the information, particularly JT's costs of providing service and JT's wholesale and retail pricing, are inadequate and require further review.

D. Review of the Relationship between JT's Wholesale and Retail Functions. We feel the report is weak in its analysis of these functions. In our view JT should be directed by the JCRA to

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functionally separate their network operations from their retail operations through the creation of functioning cost centres. JT's network operations should be required to provide wholesale services to JT's retail operations on an arms length basis as well as to Other Licensed Operators ("OLOs") on a non discriminatory basis.

E. Review of JT's Plans for Next Generation Network ("NGN") Services. In our view the question of how JT's NGN services will fit into its future wholesale and retail service offerings is a distraction from the fixed line access issues under discussion. It is essential that wholesale services and network investment are driven by end-customer demand rather than technology and network "improvements". In the foreseeable future the JT NGN network will be used to deliver the same services they are presently delivering. Certainly discussions between the OLOs and JT regarding the future of NGN services need to be implemented but it should not be at the expense of long awaited regulatory action on outstanding issues.

In responding to the consultation Newtel will approach each of the elements of the Regulaid report in what it considers to be the order of priority. Essentially this means dealing with long outstanding complaints of pricing, discrimination, margin squeeze and cross-subsidisation ahead of any "jam tomorrow" discussions about NGN services. Our specific comments on the report are as follows:

2. Cost Allocation Review

Newtel fully support the recommendations summarised since they are the critical path to resolving a number of outstanding disputes. Newtel does however draw attention to the calculations shown for Broadband in A2.15 and subsequently A2.16. The calculation assumes 3,000 customers on one Private Connect Main. Newtel's experience is that this is an absolute maximum number (over contended even) but still only produces 7% contribution without any allocation for overheads and promotions. The assumption that 6,000 up-to customers can be supported on one Private Connect Main is mistaken. Newtel currently have [XXXXX] customers and the [X] Private Connect Main circuits are full. Therefore as the customer base increases, before any overheads can be supported, the wholesale costs increase. In addition it would appear that only half circuit pricing has been used to calculate the cost of the two resilient 100Mb Ethernet circuits to the UK, whereas the true cost of full circuits would be considerably higher.

JT have published new ADSL interconnect pricing which may relieve the situation slightly but further work is required by the JCRA/Regulaid in the correct cost allocation of overheads and promotions. Newtel has a long running and outstanding complaint surrounding this issue. ADSL represents over [XXX] of Newtel's revenue which is currently margin less. In addition it is unclear what charges JT intend to apply for the new and old ADSL interconnect services during the NGN migration and there is a risk of double charging.

3. Exististing Wholesale Product Issues in Order of Newtel's Priority

3.1 Existing Services - Outstanding ADSL Complaint

As discussed above, Newtel has a long outstanding complaint that has been continually parked with the promise that it will be dealt with via the Wholesale Review. The following Regulaid recommendations refer and are welcomed by Newtel:

- 5.24 Wholesale prices for JT's DSL service should be based on cost, not on retail minus, and should be subject to a wholesale price cap
- 5.25 JCRA should place a price cap on JT's DSL backhaul services
- 5.6 JT should not be able to make special offers or discounts unless it demonstrates to the satisfaction of JCRA that the reduced price covers the incremental cost of the service and that it is not undertaking a margin squeeze.
- 5.26 JT should include the router costs in its backhaul prices.

Newtel's greatest concern is that sufficient cost information will continue to be withheld by JT with the result that the problem seems too intractable to resolve. Therefore, in the same way that Regulaid proposes that the onus is placed on JT in 5.6, the JCRA should estimate any costs that are not fully demonstrated and justified by JT. This was the method used in a case (supplied to Newtel by the JCRA) where the German regulator was dealing with a similar margin squeeze dispute with Deutsche Telecom.

A particular example that requires immediate attention is the practice of JT offering its retail customers ADSL upgrades without charging the one-off upgrade fee but, still charging its wholesale customers the upgrade charge. It is urgently requested that recommendation 5.6 is enforced and the practice stopped until JT can "demonstrate to the satisfaction of JCRA that the reduced price covers the incremental cost of the service and that it is not undertaking a margin squeeze"

Newtel firmly believes that a resolution to the ADSL margin problems will provide a very quick return to the consumer by allowing Newtel to invest in new and competitive services rather than funding a substantial and margin less one.

3.2 Existing Services – Wholesale Line Rental and Enhanced Service Levels

- 5.1 JCRA should require JT to make available wholesale services that enable OLOs to replicate its retail services, provided that they are demanded by an OLO.
- 5.9 JCRA should mandate the introduction of wholesale line rental, and introduce a specific Condition into JT's Licence.
- 5.12 JT should publish its retail prices for enhanced service levels for leased lines.
- 5.13 The enhanced service levels should be available to OLOs at a discount of 5 - 10% from the retail prices.

Newtel have requested access to Wholesale Line rental on a number of occasions only to be met with requests for further justifications or statements that it was not in JT's work plan. Newtel believes that JT are already in breach of the "access to network" licence obligation but again, no action has been taken to-date.

3.3 Existing Services – Other Short Term Wins

The following are prioritised as simple directions that could achieve a positive effect with minimum resource and time.

- 5.30 JT should initiate the payment of penalties, not the OLO.
- 5.22 JCRA should place a price cap on JT's wholesale on-island leased lines
- 5.28 JCRA should require JT to provide electronic notification of changes to wholesale prices to the OLOs with at least 30 days notice of their implementation
- 5.29 JCRA should require JT to provide electronic notification of new wholesale products and their prices to the OLOs with at least 60 days notice of their implementation.

4. New Services – In order of priority

The current status quo of legacy TDM network and un-managed bitstream traffic over the NGN DSL network leaves a situation where JT is effectively protecting its voice business and withholding the true value of its investment in NGN. Two options emerge: Either JT must cater for the latest generation OLOs who supply all video, voice and data services via IP, or it should offer LLU so that OLOs may do it themselves. 5.8 JT and the OLOs should form a working group to agree service definitions, specifications, and processes for wholesale services.

4.1 New Services – Quality of Service over the NGN DSL network
Regulaid sumarises the situation well in 7.3.4, though QoS is not just in support of Newtel's VoIP services. Prioritising and managing video, voice and data traffic would allow considerable efficiencies and value to be derived from what remains a chaotic transmission service. Newtel has tried to make the point to JT that the end users (and therefore OLOs) would pay for this functionality and add value to the network but it is clear that JT consider this a risk to their retail voice business. Newtel was told by JT engineering managers that the required functionality was in the network but it was unlikely that time would be scheduled to configure it. If Regulaid have been told that the functionality is not available on the NGN then it calls into question other statements about switch functionality or duct availability and suggests that an independent audit should be carried out. If QoS was enabled in the JT NGN DSL network there would be a very quick return in benefits to the consumer.

4.2 New Services – Naked DSL
The JCRA should look closely at the cost allocations to line rental in respect of DSL and analogue functionality between the master socket, MSAN and switch. Newtel has already requested "Naked DSL" which is effectively just the DSL part of the wholesale line where no analogue functionality is required. A significant discount against the complete wholesale line rental would be expected. Without this, the forced rental of the whole line when the voice functionality is not required would be cross subsidising any allocated JT investment in the voice elements of it's NGN network.

4.3 New Services – LLU
Any lack in movement towards QoS and Naked DSL over the existing network leaves no option but to hand the copper over to the OLOs so that affordable services can be provided. Though it had a slow start in the UK, LLU is the preferred method of providing freedom to OLOs to answer the demands of consumers with differentiated and innovative services.

5.17 JCRA should mandate the introduction of LLU (including line sharing) and co-location, and impose suitable Licence Conditions on JT
5.18 JT should work with the OLOs to identify where they require space in MSANs, to agree a suitable co-location arrangement, and to plan the necessary processes, plans and procedures for the implementation of LLU
5.19 Working with the OLOs, JT should develop a wholesale backhaul product from its MSANs.
5.20 JT and the OLOs should discuss new forms of bitstream products (including naked DSL and those forms that will become available as a result of JT's NGN). If they are unable to agree specifications for these new services, they should refer the disagreement to JCRA using the dispute process.

4.4 New Services – Duct Sharing
5.11 JCRA should encourage operators to share ducts, and only mandate duct sharing if the operators fail to reach agreements commercially.
It is environmentally irresponsible not to pursue every avenue by which infrastructure can be shared most efficiently. Newtel would welcome an independent audit of JT's duct infrastructure (along with the functionality of switch and NGN network equipment) to confirm the ducts that are suitable for sharing.

4.5 New Services – Voice Recommendations
The Regulaid report touched briefly on SIP interconnect. On an island where one OLO is using legacy switching methods and the other is introducing the more efficient soft switch VoIP services it is important that a level playing field is maintained. CPS favours the legacy operator whereas SIP interconnect avoids the need to reverse engineer a soft switch. Without interconnect an OLO can not make use of fixed number portability. Therefore, for a level playing field to exist it is important that SIP interconnect, CPS and fixed number portability are all provided at the same time.

5.10 JCRA should mandate the introduction of fixed number portability, and introduce a specific Condition into JT's Licence (but not before SIP interconnect).
5.7 JCRA should direct JT to provide CPS in line with its Licence Condition 25 (but not before SIP interconnect).
5.21 JT's RIO prices should be set through the use of a wholesale price cap on

separate baskets of RIO services. The cap should be set for a period of three years, with the target prices being set by the use of benchmarks and the setting of an efficiency target.

4.6 New Services – Leased Lines

5.15 There should not be any further subdivision of JT's on island leased line categories.
5.16 JT should consider renaming the under 300 metres leased line category.

JT should also be mandated to publish the full circuit pricing from Jersey to a handover point in London such as Telehouse North and inter-island. Currently only half circuit pricing is published which hides the true price and allows cross-boarder arbitrage. The Regulator's attention is drawn to Newtel's comments on Cost Allocation above where this precise problem hides the true cost of delivering ADSL services.

In addition Newtel does not agree with Regulaid's comments in 5.4.3 "Should JT deliver leased lines to OLOs in the same timescales as it delivers to its own retail department?". Regulaid concludes that it should not because the time is not significant. Newtel have considerable experience of competitive JT retail account managers telling customers that JT Retail will always be able to deliver faster than Newtel. This is in breach of Clause 31.1. Worse still, if Newtel has won the deal, customers have reported that JT retail account managers have provided them with information on the delay in JT Wholesale's provisioning of Newtel's order for the customer! In the same way that a retail wholesale price margin is required, the same holds true for circuit delivery timescales.

4.7. New Services – Bundles

Newtel has significant concerns over the JCRA's ability to monitor and effectively regulate JT bundles. Currently a number of voice bundles exist and there are many reports of "deals" being done for high value clients. Before the JCRA permit JT to offer any new bundles it is essential that they are fully satisfied that the existing "deals" are demonstrated by JT to fulfill the proposed requirements. In order to do so, the JCRA must be fully satisfied about JT's accounting transparency and cost allocation.

5.3 JT should be required to demonstrate to JCRA that equivalent wholesale products are available, that the price of the bundle exceeds the incremental cost of each element, and that the retail price does not constitute a price squeeze.
5.4 The individual elements of the bundle should be available on an individual basis to retail customers.
5.5 Condition 32 of JT's licence should be amended to permit product bundling if the above requirements for equivalent wholesale services and pricing are met.

5. Wholesale and retail functions in JT

Newtel broadly agrees with the recommendations but feels that they do not go far enough towards the BT Openreach model.

In 6.4 Regulaid recommend that JT should restrict access to wholesale information on its provisioning and billing systems, and not show information about wholesale services on its customer records (with the possible short term exception of residential customers).

Newtel believe that it is essential that residential customers are included here and JT's example of customers who are moving house is alarming. Newtel has recently been analysing reasons for ADSL customer cancellations and the largest cause is "house move". On further investigation it was discovered that the JT telephone line order form includes the order of JT retail ADSL and it is clear that JT is targeting these customers. Newtel would like to request that the JCRA investigate this practice further. If JT can not share house move information with all OLO ISPs then it should not share it with its own. The current practice is an abuse of its monopoly of fixed line rental.

6. Next generation network issues

Newtel agree with the recommendations of section 7 but again warn about the danger of “jam tomorrow” discussions about network delaying the resolution of outstanding complaints. This has been the situation to-date and the wholesale review has been held forth as the route to dealing with these. NGN issues should only be considered once the issues surrounding existing services have been resolved by proactive regulation.

7. Implementation

Newtel welcome the implementation recommendations but are concerned that the timescales stretch out to December 2010 and even June 2011. A number of the second group’s proposed tasks relate to existing bitstream services and can not be allowed to drag on to mid 2011. Newtel feel that a number of the recommendations can and should be acted on immediately and a revised implementation plan agreed.

We would be pleased to discuss our views with you in further detail. Thank you for your cooperation.

Yours faithfully
NEWTEL LIMITED

PETER C FUNK
DIRECTOR

PCF/jk