

Initial Notice on Wholesale Line Rental Product

Comments on behalf of NITEL

When the Jersey Competition Regulatory Authority (CICRA/ JCRA) was established in May 2001 its initial and sole responsibility was to regulate Jersey's telecommunications industry and nothing else.

In 2004, in the Annual Report, the then Executive Director, William Brown, stated the following:

"In our role as economic regulator of the telecommunications industry, we worked with Jersey Telecom to ensure access to its network by other operators such as Cable & Wireless and Newtel. The object of this exercise is to bring competition into fixed line services, thereby giving Jersey consumers and businesses greater choice and potentially lower prices."

In 2009, CICRA/ JCRA commissioned European consultants Regulaid BV to review the cost allocations used in Jersey Telecom's (JT) separated accounts, its range of wholesale products, the relationships between JT's wholesale and retail functions and its plans for a next generation network. The Regulaid report, submitted in August 2009 produced a number of recommendations, including the following;

JCRA should require JT to make available wholesale services that enable other licensed operators (OLOs) to replicate its retail services, provided that they are demanded by an OLO.

JCRA should permit JT to offer bundles to its retail customers, on the condition that OLOs can replicate the bundles.

JCRA should mandate the introduction of wholesale line rental (WLR) and introduce a specific Condition into JT's Licence.

JCRA should mandate the introduction of fixed number portability and introduce a specific Condition into JT's Licence.

Any operator with a Class 1, 2 or 3 licence issued by JCRA should be eligible for wholesale services at wholesale rates from JT.

It is now 2014, almost exactly 5 YEARS after those recommendations were made and what has happened?

In terms of producing any benefit to NITEL the answer is – ABSOLUTELY NOTHING.

Instead of being assisted in our daily struggle against the monopoly holder of Jersey's fixed line telecommunications infrastructure, which takes full advantage of its overwhelmingly dominant market position, NITEL is faced with yet another consultation process, this time to comment on the CICRA/ JCRA proposal to present

an Initial Notice to JT to introduce – a WLR product for its fixed line telephony network by 1st June 2015.

It is barely credible that these responses are being requested as the Initial Notice documentation recalls a 2011 consultation that explained that **WLR would generally include residential and business customers (single line/PSTN & ISDN-2)**.

NITEL responded positively to the most recent consultation of March 2014, requesting the introduction of multi-line PSTN and ISDN-2 – **as soon as possible** – having already waited for over a decade.

For the avoidance of doubt, NITEL is a small licensed operator that installs bespoke business/ office telecommunications systems. Our clients require multi-line services. Single line services are normally supplied to residential homes and NITEL does not undertake that type of installation work. Consequently, NITEL reiterates its compelling requirement for multi-line PSTN and ISDN-2 and maintains a continuing objection to the constant delays emanating from the incumbent operator over the already delayed introduction of WLR.

CICRA/ JCRA makes the point that it has adopted a cautious approach to imposing obligations on JT. This is an extraordinary understatement of the prevailing circumstances where provision deadlines are being set over a year ahead, despite a previous Final Notice to supply WLR having been issued around a year ago. NITEL would point out that, under law, CICRA/ JCRA owes an equal duty of care in respect of OLOs business interests and NITEL's core business requirement is the use of multiple lines.

As a re-seller, NITEL would wish to utilise WLR in order to offer business grade, real time, integrated communications solutions to its clients, which is normal throughout UK and the rest of Europe. This would require tailor made solutions for individual clients, offering varied options including single and multiple lines, bundled packages and access to different delivery technologies. Clearly an approach that holds considerable benefit potential for Jersey's economy.

It is NITEL's view that in order to establish successful competition within the pan Channel Islands market with re-sellers utilising WLR, JT & Sure Guernsey should be obliged to offer WLR for all lines/circuits, including SDSL, ADSL, Fibre, ISDN2e, ISDN30 and Analogue lines. In short, ALL lines supplied by incumbent operators.

On a positive note, NITEL is content that - *The implementation of WLR should be technology agnostic and the ability to rent a line (or lines) on a wholesale basis should apply equally to copper and fibre networks.*

However, it is not clear how the cost of implementing WLR is to be shared between JT and OLOs.

It has been suggested that re-sellers should fund their access to WLR. This is unacceptable, especially given the ongoing income obtained on the back of WLR data charges and the dominant size of the incumbent.

Re-sellers should not be expected to invest in any WLR hardware requirements and the regulator should be aware that the incumbent operator may attempt to insist on

such investment as a further delaying tactic or as a straightforward financial hurdle for putative competitors to deal with.

Access to WLR should be free, including installation and use of all equipment such as routers, with such capacity specification as is needed to fulfil wholesale customer requests.

Price structures should apply to all on-island operators and be straightforward with no “hidden extras” such as joining fees or supplementary impediments like minimum data purchase, bundling restrictions etc.

All appropriate arrangements between licensed operators and the dominant incumbent operator can be dealt with under a straightforward contract and service level agreement.

NITEL is obliged to state that this Initial Notice document falls a long way short of establishing “a level playing field” in respect of the OLOs and the massively dominant incumbent monopoly operator of the fixed line infrastructure.

In fact, the most critical aspect of any future services linked to WLR will be a price structure that does NOT provide a “level playing field”, as that position would continue to favour the larger sized market participants due to “economies of scale”.

What is required is an adjusted or “tilted playing field” that contains a price or discount advantage to smaller entities, in order to secure their competitive position. In short, the smallest businesses should benefit most from phased or graduated WLR price bands.

This is easily achieved. A sensible measure for assessing the varied positions of the small, medium and large businesses within such a pricing structure could be on-island total data and call charge revenue. However, this would potentially overlook overseas revenue, which could contribute cross subsidisation or risk assurance for on-island activities. Such potentials should also be considered as a pricing factor for any local operator.

The logic behind this approach is that new entrants retain an early price advantage, but as a new operator develops and increases its business turnover it will progressively lose that advantage in comparison to established rival operators.

Article 18 of the Telecommunications (Jersey) Law 2002 states: *(1) The Authority may, of its own motion or on the application of any person, modify any condition contained in a licence by virtue of Article 16.*

In that light, NITEL wishes to formally request that the Initial Notice to modify JT’s operating licence should include WLR for multiple lines, as well as single lines, to the extent outlined earlier in this submission.

In addition, JT should be required to initiate, concurrently with the introduction of WLR, carrier pre-select and number portability.

NITEL also considers that the deadline for the Final Notice is far too late. Advice offered to CICRA/ JCRA indicates that the “operators” consider that they can comply with the direction to introduce WLR for single lines in 6 to 8 months. This would imply initiation from January 2015. There seems little difference in the ability to offer WLR for multiple lines as well as single lines and accordingly, NITEL requests that the Final Notice deadline be set at 1st January 2015 at the very latest. In respect of the entire history of the

existing proceedings, NITEL sees no reason why these measures cannot be introduced considerably earlier than that date, to the benefit of the local economy.

In conclusion NITEL would also remind CICRA/ JCRA of this section of the 2009 Regulaid report.

“We regard the problems in Jersey’s telecommunications sector as SEVERE because there is no firm foundation for effective competition. We therefore think that JCRA should require JT to introduce new wholesale products, to reduce its wholesale prices, and to become more efficient.”

That consultant advice was conveyed to CICRA/ JCRA **FIVE YEARS AGO.**