



## **Response by Sure (Jersey) Limited to CICRA consultation document 15/13: Jersey Telecom Gigabit Isles compensation for enforced router replacement**

### **Overview**

Sure (Jersey) Limited is pleased to submit this response to the CICRA consultation document (“the consultation”) on the review of JT’s compensation for enforced router replacement, issued by CICRA on the 2<sup>nd</sup> April 2015. This is a non-confidential response, which we are happy for CICRA to publish on its website.

Whilst Sure fully supports this review we believe that it should have been undertaken much sooner. CICRA first voiced concerns regarding JT’s approach to enforced router replacement in a letter to JT dated 2<sup>nd</sup> March 2012<sup>1</sup>. These concerns were in response to the notification JT had submitted to CICRA under Condition 33 of its Licence (“LC33”) on the 29th February 2012, with certain proposed terms and prices for the wholesale products relating to JT’s Gigabit Isles programme. CICRA’s letter clearly stated its view that the costs associated with providing the new routers needed by customers under the forced migration from copper to fibre broadband should be borne by JT Networks. It went on to say that this - and other concerns it had in relation to matters affecting consumers - needed to be resolved before JT’s commercial launch of Gigabit Isles.

Despite this, CICRA then seemed to step back and allow JT to launch, leaving it to Sure to reach an agreement with JT in terms of how issues surrounding replacement fibre routers should work in practice. It took until October 2013 before Sure was able to reach an agreement with JT, a timescale that we think could have been much shorter had CICRA taken a more active role in those discussions. Since the agreement has been in place we have engaged with CICRA on several occasions to express our concerns regarding the ways in which JT has tried to implement the agreement and have been assured that the issues would be looked into.

It is therefore very disappointing that it has taken this long to get to this stage and, as we discuss further below, to attempt to resolve the issue by putting in place a far more complex arrangement for dealing with compensation arrangements than is necessary. We have therefore proposed below what in our view is a more pragmatic, proportionate and workable solution. We would be happy to discuss this further with CICRA, should this be helpful in reaching an effective and fair resolution, so that we can finally reach a conclusion to this long-standing issue.

### **Response to questions:**

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<sup>1</sup> A copy of this letter was provided to Sure and OLOs, and the Economic Development Department, as part of a subsequent letter sent by the JCRA to JT on the 22<sup>nd</sup> March 2012. Note that in this response we do not distinguish between the JCRA and CICRA, although we recognise that the JCRA is the relevant regulatory body for this issue and the relevant correspondence referred to in this response would have been on JCRA letter-headed paper.

*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?*

CICRA refers to the October 2013 agreement (page 5 of the consultation<sup>2</sup>) as proving to be acceptable at the time because ‘all customers being converted from copper to fibre continued to take service from their existing service provider’. The fact that customers were not at that time switching between providers meant that the issues currently being faced by Sure (and potentially Newtel) were masked. However, the real reason why this agreement failed is because JT chose not to reveal to Sure (and, seemingly, its own customers) at the time that it intended to fundamentally change the router ownership model.

Prior to JT’s enforced migration of copper based broadband services to fibre based services the customer’s router had always belonged to them (whether purchased by them directly, or provided by their ISP) and this is the model that Sure had been expected to continue in Jersey (and in fact, the model by which Sure still operates). JT, however, chose to favour its own aims over those of its end users and wholesale customers and instead of providing appropriate recompense (in the form of a replacement router to be owned by the end user, or in the case of wholesale, compensation so that OLOs could provide new routers to their end users) has claimed all of its retail fibre based routers as their own property. Had Sure known before October 2013 about JT’s stance we would not have signed our agreement with them. We believe that JT’s decision not to give fibre routers to its customers has not only led to its current anti-competitive position in the Jersey broadband market, but has also been disingenuous towards its retail customers – the majority of whom are probably oblivious to the fact that the router that JT has provided them is simply on loan.

*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.*

Sure’s views differ to CICRA’s in relation to the principles associated with compensation payments. Whilst we fully support its view that neither retail service providers (“ISPs”) nor consumers should be disadvantaged by JT Networks’ decision to convert its copper local loop to fibre, we consider that CICRA’s proposals may unnecessarily complicate the compensation process.

Sure believes that the issue of router supply and ownership could best be resolved by using the broadly similar ownership principles already applied to the copper-based broadband market, being that:

1. Each customer should be offered a free router by their ISP (the only difference in the case of fibre is that rather than the ISP having to foot the bill, for all customers affected by JT Networks’ enforced migration the cost of the router would first be borne by the ISP, but then reclaimed from JT Networks, using the £50.29 subsidy model already in existence.) In all cases the router ownership should be transferred to the customer who is in the premises at the time of the copper to fibre migration process. The key to success would be for the JCRA to require JT Retail to handover ownership of all existing Tilgin routers to their customers (as we believe JT had first indicated and should have done from the start).
2. When a customer who has received a free router moves to another property they simply take the router with them. In such circumstances no further subsidy would need to be

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<sup>2</sup> [www.cicra.gg/files/CICRA%201513%20consultation.pdf](http://www.cicra.gg/files/CICRA%201513%20consultation.pdf)

provided by JT Networks in relation to either the premises being vacated or the new premises being occupied.

3. Customers should be free to provide their own fibre-based router (as some of both JT's and Sure's copper and fibre based customers have already chosen to do). In such cases the customer (at the time of copper to fibre migration) should have the option of receiving a free standard router from their ISP as a back-up/spare or simply telling their ISP that no router is required, in which case no subsidy would be payable (in the same way that for copper-based routers customers only received the benefit if they take the standard router provided by their ISP).

In the above scenarios JT Networks would only be liable to the relevant ISP for the agreed cost of a fibre router at the time that the service is migrated from copper to fibre, so the concept of assigning an exchange number as a proxy for the customer and then tracking the depreciated value when switching or ceasing provider would not need to exist.

*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?*

Based on our response to Question 2, we believe that CICRA should support a single mechanism for compensation, but not on the basis of any of the means that CICRA is currently proposing (to the property, to ISPs or the customer). We note that CICRA shares our view that the compensation should be paid for the benefit of the end customer rather than the service provider<sup>3</sup>, but we believe that this can best be achieved by the ISPs being required to use the compensation that they receive from JT Networks to gift each of their customers, at the time of copper to fibre migration, a fibre router.

The transaction therefore occurs as a one-off activity, with no further need to track the exchange line number on an ongoing basis.

*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.*

We consider that the calculation and application of a depreciation process would create an administrative burden, be unnecessarily complex and potentially confusing for customers. With our proposal there is no need to track the router beyond checking that the customer has received it at the time of copper to fibre migration. As the router would then belong to the customer what they do with it after that would be entirely up to them. If they move house they take it with them; if they cease their service they keep it/dispose of it as they wish and if they move to another ISP then they simply change the log-in credentials to those that would be supplied by the new provider.

*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.*

CICRA's proposals, even on paper (as shown in Annex A) look complicated. Our proposal is a simple improvement from the existing compensation mechanism. Sure already gifts each of its migrated customers a fibre router and if JT were required to do the same then the transaction remains a

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<sup>3</sup> Section 6.4 of the consultation

straightforward process, with easy validation by CICRA, ISPs and customers themselves. Simply, was the customer given a free router by their current ISP when they migrated from copper to fibre?

*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.*

Sure believes that CICRA's ongoing support and independent review of the router compensation scheme is important, but that its proposed wide-reaching changes to the method in which the process is currently managed is heavy-handed in relation to the benefit that it is trying to achieve (i.e. a fair outcome for customers).

*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.*

Sure does not support the scheme currently being proposed by CICRA, for the reasons given above, although we appreciate that it has thought 'outside of the box' in proposing an alternative solution to the one currently in place. We do, however, believe that it is important that CICRA oversees whatever revised process is implemented and that its support should be available throughout the remainder of JT's enforced migration process to ensure that neither customers nor ISPs are disadvantaged by JT's fibre project.

In summary, our proposal is that on each migration from copper to fibre the relevant ISP should provide its customer with a free fibre router and then be reimbursed (the agreed £50.29) from JT Networks. This can be represented by the diagram in Annex 1.

Submitted on behalf of Sure (Jersey) Limited

8<sup>th</sup> June 2015

**Annex 1:**

