



Sure's response to the JCRA's Initial Notice re Jersey Mobile Termination Rates

Sure (Jersey) Limited ('Sure') is submitting this response to the JCRA's Initial Notice '2018/19 Review of Mobile Termination Rates in Jersey' (CICRA ref: 20/05), which it issued on 17th February 2020.

This response is submitted to the JCRA on a non-confidential basis and we are happy for the JCRA to publish it on CICRA's website.

As previously set out by us in relation to the mobile termination rates (MTRs) proposed by the JCRA, we are supportive of the proposed multi-year glidepath process. However, Sure is concerned about the ambiguous, inconsistent and, at times, conflicting stances taken by the JCRA in arriving at its currently proposed outcome for the regulation of local MTRs. The poorly constructed wording of the JCRA's proposed Direction does nothing to lessen our concerns in this regard.

The crux of our concerns very much remains with the uncertainty as to the JCRA's intended level of accessibility of the mobile call termination service by non-licensed operators (those not defined and regulated by the JCRA as licensees). Examples of such operators include BT and Vodafone – both of which operate in the UK, but not in Jersey. Clause 3 of the JCRA's proposed Direction, as set out on page 7 of its Initial Notice, states that 'The Licensee shall not unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the mobile call termination service'. We have no intention of doing so, but very clearly note that the mobile termination service, as confirmed by the JCRA, relates to nothing more than the receipt of a call on the relevant mobile licensee's network (i.e. at its switch) and then termination of the call on that licensee's network. We are happy to provide that service on a consistent basis, irrespective of the origination of that call.

As the point of physical connectivity (the 'interconnection') occurs at the licensee's switch, the call has to be transported there by using interconnection services that are entirely independent from the mobile termination service. Such interconnections can only be provided between the aforementioned local licensees - being the only entities approved by the JCRA to undertake this function. As a result, the likes of BT and Vodafone are unable to directly access the mobile termination service of Jersey mobile call termination providers, so UK based operators handover their Jersey bound calls to local licensees outside of the regulatory jurisdiction. The 'end-to-end' service provided by Jersey licensees to UK based operators therefore covers the local MTR, charged at the standard regulated rate, in addition to a transit service to bring in the call from no nearer than the mid-point in the English Channel. In respect of our own services, we can confirm that we will not discriminate in the application of the MTR – doing so in all cases, irrespective of the origination of the call.

Moving on to the relevant framework for the regulation of mobile call termination, we will spare the JCRA (and other readers of this response) from our inclusion of a detailed timeline of our many unanswered requests for the JCRA to clarify why it believes that it is appropriate to try to reclassify and regulate MTRs under any framework other than Interconnection and Access – the industry-wide convention for the regulation of such services. Since its inception in 2001, the JCRA appears to have been happy to fully align itself with that convention, before only in the last three years undertaking a U-turn, seemingly because it does not suit the JCRA's more recent motives. Inconsistent regulatory policy is, at least, unhelpful and at most, actually harmful.

We have set out in previous regulatory submissions on this topic the almost inevitable waterbed effect (where local retail prices would likely need to rise to offset the reduced charges applied to UK operators), should the JCRA seek to make the local MTR directly available to UK operators – which we firmly believe would be counter to the JCRA's current licensing powers.

Local operators' investments in 4G would have been predicated on business cases where MTRs are maintained at the level appropriate to the required return on investment and the minimisation of local retail mobile charge increases. We would very much like to be proved wrong, but the JCRA appears adamant that its work will not be complete on this topic until such time as local residents are forced to pay more for their mobile service and UK based operators materially profit from reduced costs and increased margins, whilst they continue to onward sell access to Jersey mobile providers at the same rates. We have provided evidence of this latter aspect to the JCRA and it has chosen to dismiss that fact. One could therefore conclude that the JCRA is seeking to actively withdraw local cost minimisation benefits and instead, directly hand them to UK telecoms providers. Sure cannot understand how the JCRA believes that this is aligned with its duties under the Telecommunications (Jersey) Law, 2002¹.

Of related concern is the way in which the JCRA has chosen to use wording within its proposed Direction (pages 6 & 7 of its Initial Notice), which it appears to have taken out of context from its use in other jurisdictions.

For example, in the proposed Direction wording of its Initial Notice there are references to terms which are vital to the meaning of the Direction, but which are novel and undefined in the context of Jersey's telecommunications laws and regulations, i.e. they are terms which are not defined in either the Telecommunications (Jersey) Law 2002, Sure's Telecommunications Licence, or JT (Jersey) Limited's Telecommunications Licence. These terms include:

- 'public electronic communications network', for which the likely Jersey law similar or synonymous term would, but not necessarily, be 'public telecommunication system'; and
- 'mobile communications provider', for which the likely Jersey law similar or synonymous term would, but not necessarily, be 'licensee', where the licence provides for the provision of telecommunication system and telecommunication services that include mobile service.

It seems likely that the person drafting the Direction has used language adopted in the EU's and the UK's electronic communications legislation and inappropriately, and potentially without care, applied these alien terms in the proposed Direction.

We point out such ambiguities in the knowledge that should Sure (or any other licensee) wish to appeal any decision in relation to the JCRA's Direction, focus will be drawn to the vagueness and uncertainty created by any undefined terms. It is obviously up to the JCRA whether to remove this ambiguity by reissuing its Initial Notice with all relevant terms defined – something that we believe it should – or to continue with its intended regulatory process regardless. Whatever its choice, it is evident that there are clear weaknesses in the currently proposed wording.

Additionally, we are concerned that the JCRA has provided no explanation as to why, on 13th December 2019, it withdrew the Non-Statutory Final Notice and Statutory Initial Notice that had previously been issued. Instead it has been left to the operators to try to figure out what those reasons may be. This lack of transparency by a regulator is very concerning. Certainly, a comparison of the JCRA's withdrawn and replacement documents revealed, amongst other things, that:

- Reference to 'network access' has been removed from the Final Decision section (we assume for the JCRA to try to distance itself from its previous recognition that mobile call termination does actually fall within Interconnection and Access and is therefore only relevant to locally licensed operators); and

¹ In particular, Articles 7 (2) (c) & (e), in relation to furthering the economic interests of Jersey and ensuring that local telecommunications providers have sufficient financial resources to conduct their activities. In relation to the multi-million pound investments by Jersey licensees into 4G mobile networks this would most definitely be questionable, without those licensees being forced to make local customers pay more.

- The JCRA chose to remove its wording of agreement with Sure that a request for network access can only be made by an operator licensed by the JCRA. The removal of such acknowledgement speaks volumes about the JCRA more recent motives – seemingly, to provide financial benefit to UK operators, rather than constraint the retail charges for local mobile service users.

It is not unreasonable for operators to expect a full explanation of what underlying changes have been made to the JCRA's previously much-consulted on position, and why – and to be given a proper opportunity to comment.

We close our observations by noting that a procedural error has been made by the JCRA – one which could be deemed to render the Initial Notice null and void – an outcome that seems appropriate anyway, given the issues highlighted by us in this response. Article 11 of the Telecommunications (Jersey) Law, 2002 sets out the rules and procedure that the JCRA must follow before it can issue a Direction. These rules specify that an Initial Notice must be given and set out the information that must be included in that Initial Notice. This information includes a requirement 'specifying the place where the document giving effect to the proposed exercise may be inspected', but this information and a statement to that effect is not included in the Initial Notice.

For the reasons set out above we conclude that the JCRA's revised Initial Notice should be withdrawn, with a further revised Initial Notice being issued once these matters have been resolved.

Sure (Jersey) Limited

17th March 2020