



Telecommunications (Jersey) Law 2002

Case T-091 - Initial Notice: Proposed Licence for Nitel Limited

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Deadlines for representations: 17:00 on 3 May 2023

Jersey Competition Regulatory Authority
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Contents

1. Executive Summary.....	1
2. Background and structure of this Document.....	1
3. Next Steps	1

1. Executive Summary

- 1.1 The Jersey Competition Regulatory Authority (the **Authority**), is issuing this Initial Notice of its intention to exercise a specified regulatory function to grant a Class I Licence pursuant to Article 14(1) of the Telecommunications (Jersey) Law 2002 (**Telecoms Law**) to Nitel Limited (**Nitel**) a company incorporated in Jersey under registration number 78433 the registered office of which is at Nitel House, 1 Coie Lane, St. Helier, Jersey JE2 4LW.
- 1.2 The form of the proposed licence (**Licence**) is annexed to this Initial Notice.
- 1.3 This Initial Notice sets out the intention of the Authority to exercise such specified regulatory function. In due course, the Authority may issue a Final Notice or a fresh Initial Notice if responses are received, following the process outlined in Article 11 of the Telecoms Law.

2. Legislative Background and propose Licence

- 2.1 Article 2(1) of the Telecoms Law provides that:

'A person shall not run part or all of a telecommunications system except under a licence in force in respect of the person's running of the system'

- 2.2 Article 14(1) states that:

'The Authority may grant a licence for the running of any telecommunications system specified in the licence.'

and Articles 15 and 16 set out, respectively, that such a licence may contain conditions and what those conditions can relate to.

- 2.3 In practice, the Authority has granted four classes of licence. The Licence is a Class I licence, which is appropriate for:

'those telecoms operators that have no discernible impact on the competitive market'

- 2.4 The Class I licence granted to Nitel under the Telecoms Law on 8 March 2023 (**Old Licence**) expired on 7 March 2023. Accordingly Nitel has applied for the Licence and has paid the specified application fee. The Authority has determined that Nitel has complied with the application process set out on its website.
- 2.5 The Licence is in the same terms as the Old Licence, save for necessary updates and corrections, and is consistent with the other Class I licences currently in issue.
- 2.6 It is intended that the Licence will be issued on or around 8 May 2023 with a Commencement Date of 8 March 2023.

3. Next Steps

- 3.1 This is Initial Notice of an intended exercise by the Authority of a specified regulatory function, that is to issue the Licence to Nitel. If representations are received before 17:00 on 3 May 2023 regarding the proposed exercise of such function, the Authority will consider them and will decide:
 - (a) not to exercise such function;
 - (b) to issue a new Initial Notice; or
 - (c) to issue a Final Notice confirming the issuing of the Licence to Nitel.

- 3.2 If no responses are received before such time, the Final Notice issuing the Licence to Nitel will be made on or about 8 May 2023.
- 3.3 Written representation or objections to the exercise of this specified regulatory function may be made by e-mail to info@jcra.je on or before 17:00 on 3 May 2023.

By Order of the Authority

30 March 2023

Annex: proposed Licence



Telecommunications (Jersey) Law 2002

Licence for

Nitel Limited

JERSEY COMPETITION REGULATORY AUTHORITY

Class I Licence

issued to

Nitel Limited

under

THE TELECOMMUNICATIONS (JERSEY) LAW 2002

The JCRA, in exercise of the powers conferred on it by the Telecommunications (Jersey) Law 2002, grants to Nitel Limited, a company incorporated in the Bailiwick of Jersey under registered number 78433 and with its registered office at Nitel House, 1 Coie Lane, St. Helier, Jersey JE2 4LW, a Licence to run the Licensed Telecommunication System and provide Telecommunication Services (as these terms are defined in the Conditions of this Licence), within, to and from the Bailiwick of Jersey and subject to the Conditions, all lawful Directions of the JCRA and all applicable laws, rules, regulations, ordinances and orders of the States of Jersey.

DATED: [] MAY 2023

SIGNED ON BEHALF OF THE JERSEY COMPETITION REGULATORY AUTHORITY BY:

**Tim Ringsdore
Chief Executive**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Law has, except where the context otherwise requires, the same meaning in the Licence and the Conditions that it has in the Law. In addition, the expressions set out below have the meanings given to them below:

Conditions	means Conditions 1 to 13 of this Licence, as may be amended, revoked or added to by the JCRA from time to time;
Direction	means a written statement issued by the JCRA with which a licensee must comply;
Law	means the Telecommunications (Jersey) Law 2002;
Licence	means this licence to run the Licensed Telecommunication System, subject to the Conditions;
Licence Commencement Date	means 8 March 2023;
Licence Fee	means the fee prescribed by the JCRA under Article 17 of the Law and payable by the Licensee;
Licensed Telecommunication System	means the system for the conveyance of messages through the agency of energy which the Licensee is authorised to establish, operate and maintain in the Bailiwick of Jersey;
Licensee	means Nitel Limited, registration number 78433, the registered office of which is Nitel House, 1 Coie Lane, St. Helier, JE2 4LW, Jersey;
Network	means a set of interconnected devices across which a telecommunicated message can be passed;
Numbers	means the formats of codes and Subscriber numbers for routing telecommunications services to a Network termination point, user, telecommunications equipment or customer premises equipment in the Bailiwick of Jersey, which formats are allocated by the JCRA or by Ofcom under the Communications Act 2003;
Other Licensed Operator	means any person who, for the time being, has the benefit of a licence granted under the Law;
Subscriber	means a legal or natural person who has a contract with the Licensee to receive Telecommunications Services. For the avoidance of doubt, a Subscriber does not include users of pre-paid services;
System	means, in this document, a device for the origin and completion of telecommunicated messages;
Telecommunications Services	means the provision of any telecommunication services to the public;
Term	means, subject to Condition 11, a period of fifteen years

from the Licence Commencement Date; and
User means a consumer of Telecommunications Services.

1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:

- (a) references to paragraphs and subparagraphs are to paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Licence;
- (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions, and reference to such a document is to that document as varied from time to time;
- (c) headings used for Conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
- (d) references to any law, rule, regulation, ordinance or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (e) use of the word "includes" or "including" should be construed as being without limitation; and
- (f) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

PART I: ESTABLISHMENT AND ENFORCEMENT

2. SCOPE OF THE LICENCE

- 2.1 This Licence authorises the Licensee to run a public telecommunication system in the Bailiwick of Jersey for the Term.
- 2.2 For the avoidance of doubt, this licence shall be non-exclusive.
- 2.3 The Licence is personal to the Licensee and the Licensee shall not:
- (a) sub-licence, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
 - (b) sell or pledge any of its assets which are necessary for the Licensed Telecommunications System, unless such assets are immediately replaced with equivalent assets,
- without the prior written consent of the JCRA, such consent not to be unreasonably withheld.
- 2.4 Condition 2.3 does not apply to:
- (a) a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee, being borrowings for the purpose of the Licensed Telecommunications System or the provision thereof or anything incidental thereto; or
 - (b) a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence, or
 - (c) a transfer, assignment or other disposal of assets made in the ordinary course of business.
- 2.5 Subject to Condition 8 the Licensee shall notify the JCRA of the occurrence of any of the following:
- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition including any change to the Licensed Telecommunications System which may detrimentally affect the permanence, availability or quality of the Licensed system or services;
 - (b) an insolvency-related event in respect of the Licensee or an Associated Company of the Licensee, or any preparatory steps being taken that might lead to an insolvency-related event, immediately upon the Licensee becoming aware of the event.
- 2.6 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed Telecommunications System and for the exercise of its rights or discharge of its obligations under this Licence.

- 2.7 The Licensee shall ensure that:
- (a) the administration and management of the business associated with the establishment, maintenance and operation of the Licensed Telecommunications System shall be conducted from the Bailiwick of Jersey; and
 - (b) its business is conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length from the business of any of its shareholders or associated companies.

3. LICENCE FEE

- 3.1 The Licensee shall pay the Licence Fee in the manner directed by the JCRA.
- 3.2 Without prejudice to any other remedies of the JCRA under this Licence or applicable laws, if the Licensee fails to pay any amount due to the JCRA under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at four percentage points above the published base rate of the Bank of England.

4. PROVISION OF INFORMATION

- 4.1 For the purposes of monitoring the Licensee's compliance with the Conditions and the Law or facilitating the JCRA's compliance with its obligations under the Law, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other information including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.
- 4.2 The Licensee shall provide the JCRA with a comprehensive report on its use of the radiofrequency spectrum, and the anticipated future use, as requested by the JCRA from time to time.
- 4.3 The JCRA may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licensed Telecommunications System or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may issue Directions with regard to the manner in which such an examination, investigation or audit is carried out.
- 4.4 In particular, the JCRA may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination, investigation or audit of any aspect of the Licensed Telecommunications System to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its associated companies' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its associated companies, as may be required in order to carry out the examination investigation or audit.
- 4.5 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.

5. COMPLIANCE

5.1 In addition to the Conditions, the Licensee shall comply with:

- (a) any obligation imposed on it by the Law or by any law, regulation, rule or ordinance; and
- (b) any Direction duly issued by the JCRA under the Law or any law, regulation, rule, ordinance or this Licence.

6. MODIFICATION

6.1 The JCRA may from time to time modify this Licence, including by deleting or adding to any Condition. Any modification, deletion or addition shall be made in accordance with Article 18 of the Law and any other requirements under any applicable law.

7. ENFORCEMENT AND REVOCATION

7.1 The JCRA may at any time revoke this Licence in accordance with the provisions and procedures set out in Articles 19 and 20 of the Law. The JCRA may also take any action to enforce any Condition in accordance with Article 19 of the Law or any Direction issued relating to this Licence.

8. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS

8.1 If the Licensee is prevented from performing any of its obligations under this Licence because of force majeure:

- (a) the Licensee shall notify the JCRA of those obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
- (b) the JCRA may suspend those obligations and the Licensee will not be liable to perform those obligations, for so long as the force majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources, work-around plans or other means.

9. INTEGRITY OF THE NETWORK

9.1 The Licensee shall take all reasonable steps to ensure the integrity of the Network and may refuse to provide Telecommunications Services to a particular User if providing those Services would or would be likely to cause damage or interference to the Licensed Telecommunications System.

9.2 The Licensee shall provide details with regard to any proposed refusal of Telecommunications Services to the JCRA. The JCRA may issue a determination on the matter.

10. MATTERS OF INTEREST TO JERSEY

10.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Licensed Telecommunications System take reasonable steps to prevent any

Telecommunications Services from being used in, or in relation to, the commission of offences against the laws of the Bailiwick of Jersey.

- 10.2 The Licensee shall establish and maintain the capability to intercept Messages transmitted over the Licensed Telecommunications System and to provide information regarding the use of Telecommunications Services, in order to be able to meet the requirements of applicable laws.

11. TERM AND RENEWAL

- 11.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Law and subject to any revocation or suspension by the JCRA, for the Term.
- 11.2 At any time after the ninth anniversary but prior to the eleventh anniversary of the Licence Commencement Date, the Licensee may serve notice on the JCRA requesting a renewal of this Licence.
- 11.3 Within fifty-six days of the receipt of this notice under Condition 11.2 or such further period as may be agreed with the Licensee, the JCRA shall notify the Licensee whether or not it agrees to a renewal of the Licence subject to the same Conditions or any modified, amended or additional Conditions, subject to the Licensee providing all necessary information to the JCRA to enable it to make the notification within the required time.

PART II: PUBLIC SERVICE CONDITIONS

12. CONSUMER PROTECTION

- 12.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish its standard terms and conditions, including tariffs under which it provides each category of Telecommunications Services to Subscribers and Users. In the absence of any other Direction from the JCRA, the Licensee shall ensure that a current statement of all applicable terms and conditions is
- (a) supplied to the JCRA on its request; and
 - (b) promptly made available for inspection at the request of any member of the public or promptly sent to them on request.
- 12.2 The JCRA may direct the Licensee to change the Licensee's standard terms and conditions from time to time.
- 12.3 The Licensee shall safeguard the privacy and confidentiality of all messages transmitted over the Licensed Telecommunications System and the Telecommunications Services provided shall comply with all applicable laws from time to time regarding the protection of personal data and shall comply with any Directions issued by the JCRA for the purposes of protecting the interests of its Subscribers or Users.
- 12.4 The Licensee shall provide each of its Subscribers with an acceptable level of itemised billing for international calls, at no additional charge, except where a Subscriber has accepted terms of contract specifying no itemization for all or certain classes of calls. On request by a Subscriber, the Licensee shall also provide itemised billing for local calls at a reasonable charge. The itemised bill produced by the Licensee shall in all cases provide sufficient detail to facilitate verification of charges incurred by the Subscriber in using the Telecommunications Services. Calls which are free of charge to the user, including calls to helplines, need not be identified in the Subscriber's itemised bill.
- 12.5 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA for the resolution of disputes.

PART III: CONDITIONS APPLICABLE TO ALL LICENSEES

13. MISUSE OF DATA

- 13.1 The Licensee shall not make use of Network or traffic data, traffic profiles or any other data of any nature which become available to it directly or indirectly as a result of entering into interconnection arrangements or otherwise as a result of carrying messages, in any way which, in the reasonable opinion of the JCRA, would unduly prefer the interests of any business carried on by the Licensee or an associated company of the Licensee, or place Other Licensed Operators at an unfair disadvantage.