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Office of Utility Regulation,
Suites B1 and B2,
Hirzel Court,
St Peter Port,
Guemsey,
GY1 2NH.

10 June 2010

For the attention of Mr John Curran – Director General

Dear John,

Review of Mobile Licence Conditions – Consultation Paper

With reference to the Office of Utility Regulation's (OUR) consultation paper OUR 10/05, regarding the Review of Mobile Licence Conditions, dated May 2010, Guemsey Airtel Limited (GAL) is pleased to provide its comments as follows.

GAL welcomes the standardisation of Guemsey mobile licences and broadly supports the OUR's proposal to remove licence conditions and obligations from Guemsey's mobile operators which have become unnecessary or no longer relevant.

Guemsey Airtel Limited (GAL) welcomes measured relaxation of the regulatory approach in the Guemsey mobile sector

GAL broadly supports the OUR's proposed move to lighter touch regulation but GAL would recommend the OUR takes a cautious and considered approach in relaxing some aspects of regulation in the mobile sector. Whilst the OUR has been successful in creating a positive environment to nurture competition in the Guemsey mobile market, through the existing rigid licencing framework, by the OUR's own statistics, the incumbent C&W still remains strongly dominant in this sector. Thus, GAL firmly believes that the Guemsey mobile market has not evolved sufficiently to enable certain key regulatory controls to be relaxed to prevent potential monopolistic or anti-competitive behaviour to constrain the development of robust and sustainable competition.

Additionally, in view of the different circumstances behind the development and award of each of the operators' licences over the last 10 years, we concur that the OUR should align the licence conditions and obligations across all operator's licences, which we believe will further the levelling of the playing field in the Guemsey mobile market.

GAL concurs with the OUR's proposed framework to assess the relevancy of licence conditions should include :-

- *The condition is no longer relevant in today's mobile market;*
- *The condition has already been met by the operators;*
- *Going forward, market competition should drive these outcomes to be achieved independently of regulation;*

Jersey Airtel Limited, 2nd Floor, Le Masurier House, La Rue le Masurier, St. Helier, Jersey JE2 4YE
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- *The condition is unnecessarily long or complicated;*
- *The condition is out of date; or*
- *The condition may hold back market innovation if it remains within the mobile licences.*

GAL will base its assessment and comments regarding the specific licence conditions the OUR has highlighted for consideration against the framework set-out above.

Condition 9 – Integrity of the Network

GAL believes this is an important licence condition since whilst it does not necessarily support the growth of competition, it provides a valuable legal safeguard for the operators to act and protect their networks, operations and consumer interests from inappropriate user behaviour.

GAL concludes that this licence condition remains relevant in the current and immediate market environment and should be retained in operators' licences.

Condition 12 – Service to the Public

Since this condition is intended to ensure that all operators offer minimum levels of mobile service and coverage across the Bailiwick, GAL believes with the availability of Mobile Number Portability, consumers have full freedom to move their services and this is effectively ensuring all the Guernsey mobiles operators are delivering uniform service coverage and quality as fundamental operational pre-requisites. Thus, GAL firmly believes that consumer choice and the strong competitive drivers in the Guernsey market, largely driven by porting ease will continue to ensure that all mobile operators focus on maintaining and optimising their network service quality and coverage, and therefore we conclude there is no longer the need for specific regulatory or licencing controls regarding service coverage.

GAL concludes that licence condition 12 specifying fixed coverage thresholds is no longer appropriate. Whilst GAL understands the OUR's concerns that operators could "cherry pick" the most profitable areas/ sectors, GAL firmly believes that continued OUR support on strengthening sustained competition in the Guernsey market will ensure that consumer demand drives all operators to deliver universal service quality across the Bailiwick, However, as a compromise, GAL would propose that the existing threshold drivers are replaced by a general requirement for all operators to provide acceptable level of services across all parts of the Bailiwick.

GAL agrees with the OUR's view that future licences should emphasise the difference between network quality and coverage. In our view, network coverage is now taken as a base pre-requisite of providing mobile services in Guernsey. However, network quality is a more important factor to enable consumers to differentiate between the different Guernsey operators/ providers. GAL believes that the network quality metrics specified in licence condition 16, namely, Blocking Rate, Call Drop Rate and Availability; are well defined and appropriate to enable the OUR to measure and ensure all operators are maintaining acceptable levels of service quality.

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Condition 14 – Directory Information

GAL agrees that all operators should be obliged to ensure their customers have access to directory information and operator services, whether they are provided by other mobile operators or third party providers. GAL also concurs that all operators should be obliged to make directory information about their subscriber bases available to other operators and directory service providers, subject to compliance with the relevant regulatory and data protection requirements.

GAL believes the current licence condition provisions relating to operator obligations to provide access to directory information and operator services to its users; and directory information to other operators/ providers; are appropriate and should be retained.

When GAL launched its mobile services in Guernsey, it took a conscious decision not to publish a paper based telephone directory, based on environmental considerations and consumer feedback. Whilst currently two separate paper telephone directories are published in Guernsey, GAL believes this is excessive and unnecessary, since it generates huge amounts of paper waste and is not supported by Guernsey consumers.

GAL believes that there should only be a single paper telephone directory published in Guernsey. GAL has no preference on whether this single paper directory should be published jointly by multiple operators or by the incumbent C&W/ Sure. However, GAL agrees with the OUR's proposal that C&W/ Sure should not be allowed to be the sole beneficiary financially from the publication of the Guernsey telephone directory. GAL supports the proposal that other licenced operators should be able to charge C&W/ Sure or other directory providers for making their user information available for inclusion in telephone directories, whether paper or electronic. Directory charges should be fixed by the OUR at appropriate commercial levels which recompense operators for the costs of collecting and managing user directory information.

GAL supports the OUR's proposed changes to licence condition 14 whereby the licences are revised to; a) limit the publication of a single paper telephone directory in Guernsey; and b) specify the mechanism and charges to enable the other licenced operators to levy charges for providing user information to directory services providers.

Condition 15 – Network & Service Development

Guernsey mobile consumers have come to expect and demand exacting standards of service delivery/network quality, leading edge product/ handset innovation and tariffs, driven by the strong competition amongst the operators and consumer freedom to move/ port their services easily. GAL firmly believes that competition is therefore sufficiently robust and established in the Guernsey mobile market to drive the operators to continually innovate and optimise their operations and offerings to maximise market share, without the need for regulatory intervention or mandates.

GAL views that in such a demanding and dynamic market as Guernsey, operators must continually innovate and optimise their service delivery, if they are to thrive and survive. Whilst network quality across the Guernsey operators is acceptable, Guernsey consumers will not tolerate sub-standard network quality or falling product standards, and will punish delinquent operators by porting their numbers to the operators with the “best” product offerings.

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Whilst there is a danger that customers could be trapped with sub-standard products due to minimum term contracts, we believe this risk is low, through the enforcement of network quality licence metrics and through the well developed consumer service frameworks that all operators have in place to address customer complaints. The existing consumer service frameworks operate effectively by providing consumers with a clear understanding of service delivery standards and a defined and effective complaint process which culminates with the OUR's involvement. GAL would therefore concur with the OUR's suggestion that potential customer issues are dealt with on an ex-post basis.

GAL supports the removal of the majority of the provisions of licence condition 15, specifically those including coverage threshold requirements which have been achieved and are no longer needed. GAL would propose that the requirement to provide seamless roaming between Guernsey and Jersey is retained and it may be appropriate for the OUR to require operators to provide an annual report outlining the network and service enhancements they have delivered in the previous 12 months.

Condition 16 – Technical Quality of Network

In a saturated and highly competitive market such as Guernsey, high quality network and service delivery are seen by consumers as pre-requisites and users will quickly move away from operators who fail to deliver acceptable service performance. As already stated, GAL believes that the existing network quality metrics specified in licence condition 16, namely, Blocking Rate, Call Drop Rate and Availability; are well defined, appropriate and positioned to enable the OUR to measure and ensure all operators are maintaining acceptable levels of service quality.

GAL would question the validity of the existing speech quality metric, as measured in operators' OSS systems, since this metric is ambiguous and difficult to quantify on a universal or consistent basis. GAL suggests the OUR review the validity of the speech quality metric and if this is still viewed to be appropriate, then the OUR would be advised to provide a robust definition and collection methodology for the metric that operators can comply with in a consistent and accurate manner.

GAL recommends that the existing provisions of licence condition 16 are retained since they are important in verifying operators are maintaining key service quality parameters. However, GAL believes Network Technical Quality parameters are included and applied universally across the licence obligations of all Guernsey's mobile network operators.

Condition 17 – Consumer Protection

GAL agrees that consumer protection is and must remain a key objective of the OUR's mobile licencing framework.

Many of the licence condition 17 provisions were appropriate in ensuring operators implemented the core consumer protection framework elements and procedures during their initial start-up phases. However, all the current operators have satisfied these conditions and operate the corresponding provisions as part of their normal business operations. Since operators, such as GAL, are now beyond their start-up phases and operating as fully fledged business operations, then many of these conditions are no longer appropriate and should be removed or modified.

Specifically, operators have developed and are providing /publishing :-

Jersey Airtel Limited, 2nd Floor, Le Masurier House, La Rue le Masurier, St. Helier, Jersey JE2 4YE
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- Consumer Code (Code of Practice);
- Standard Terms and Conditions;
- Privacy and Confidentiality of all Messages;
- Itemised Billing;
- Complaints Procedure/ Process; and
- Minimum Service Levels.

GAL would support the revision of licence conditions which change the focus of the operator's obligations from establishing / setting-up to operating the corresponding consumer protection provisions.

Currently, one of the provisions of licence condition 17 is for operators to notify the OUR of changes to terms and conditions, but this is proving to be difficult and impractical to achieve in practice due to the dynamic nature of the mobile market, in which new/ revised products, tariffs and promotional offers are being launched/ implemented constantly by operators. Thus the pace of evolution and change of terms and conditions, means that constant referral to the OUR does not add value for the consumer, OUR or the operators.

GAL therefore concurs and supports the removal of the referral requirement, but would suggest that the revised licence condition includes an obligation on operators to record/ track changes to their terms and conditions and make such records available to the OUR on request and provides the latest version of the core terms and conditions to the OUR on an annual basis.

GAL views that complaint management and monitoring is a key business function and operators should be operating effective processes as part of their normal business activities. GAL therefore supports the OUR's proposal to remove the 6 monthly reporting of consumer complaints. GAL supports moving to annual reporting or the obligation for operators to provide consumer complaint information to the OUR on request, provided the report format is pre-defined so data can be collected in the appropriate manner.

GAL believes that the current licence condition requiring individual operators to operate consumer councils in isolation does not benefit either the Guernsey consumer or market. In order to maintain competitive advantage in such a dynamic and challenging market as Guernsey, operators as a matter of course base their product and marketing strategies on consumer feedback and research, to ensure their offerings meet consumer needs. GAL believes it would be more appropriate for the OUR to set-up and operate central consumer councils to help mould the OUR's regulatory and technological policy to meet the future requirements of Guernsey consumers and the Guernsey economy. A single consumer council led by the OUR would help in :-

- Optimising the management of resources such as spectrum;
- Protecting the Guernsey environment; and
- Acting as a catalyst for the delivery of leading edge technologies and services to support the Guernsey economy.

Condition 18 – Environmental Protection

GAL agrees that the licence framework is an effective tool in ensuring mobile network operations are established and operated to minimise the impact on the Guernsey environment and community, as well as comply with best

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environmental operating practices and standards. GAL has focused its business operations on minimising environmental impact through accreditation to the Eco-Active scheme, maximising site sharing, promoting paperless billing, deploying energy saving infrastructure etc

GAL believes it is important that all operators be required to define, publish and maintain their environmental policies.

Whilst GAL welcomes the existing licence conditions that give guidance and support to the development and roll-out of the network infrastructure, these conditions are no longer pertinent since the networks are established and operational. Consequently, GAL believes it may be appropriate to reduce or remove these provisions.

GAL agrees that the licence condition should mandate operators to implement mobile telephony specific environmental protection initiatives, such as handset recycling etc

GAL believes in view of the broad environmental impact of mobile telephony operations; it is difficult to effectively define an effective compliance matrix via licence conditions. GAL would suggest that since Guernsey's mobile operators have progressed from start-up to full operations, that environmental protection interests are best served by requiring operators to be accredited by or meet the requirements of recognised environmental protection schemes, such as the Eco-Active programme operated in Jersey.

A unique feature of the GAL licence which is not applied to the other operators, is the obligation for GAL to hold an annual environmental meeting opened to the public. GAL has fulfilled this obligation fully, by designing and promoting these annual environmental meetings to encourage public interest in and feedback on GAL's environmental strategy and operations. However, sadly, despite initially strong interest during the launch of the GAL network, public interest has dropped off dramatically. In 2009, despite advertising and promoting the annual GAL environmental meeting, only two members of the public attended, clearly demonstrating the lack of public interest in this matter. GAL would request that the annual environmental meeting condition is either : a) removed from the revised GAL licence; or b) applied to the revised licences of all operators and the operators are required to collaborate and hold joint annual public environmental meetings.

Condition 19 – Monitoring Performance

GAL agrees that the network quality metrics included in the existing GAL licence are appropriate and effective to enable the OUR to monitor and ensure operators are delivering acceptable network performance and quality. However, to ensure that operators' compliance is being effectively maintained, GAL believes the OUR should define the standardised collection methodology for each of the specified metrics.

GAL supports the OUR's proposal to amend the operators' licences to require performance reporting on an annual basis rather than the current six monthly schedule.

Condition 31 – Price Regulated Services

GAL appreciates the OUR's balanced and well presented assessment of the controversial regulation and control of the dominant operator's behaviour towards key price regulated services.

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Fundamentally, by the OUR's own market statistics despite the availability of mobile number portability, C&W/ Sure remains firmly dominant with a market share of around 75% of the Guernsey mobile market and consequently can only be considered to hold significant market power in this sector.

Additionally since C&W/ Sure continues to retain a monopoly positions in the associated residential/ business voice, DSL and wholesale on and off island sectors, despite rigid wholesale regulation, it is still able to directly influence and constrain the ability of its competitors to independently set tariffs and pricing etc. On this fundamental basis, GAL firmly believes it is important that the requirement for C&W/ Sure to pre-notify publicly price changes, discounts and offers, is maintained and not relaxed.

GAL would counter the arguments used to potentially support the removal of pre-notification, as follows :-

- **Hinders competition by encouraging competitors to only change prices in response to announcements from other operators** – NOT PROVEN – Both GAL and Wave Telecom have been proactively and consistently driving price competition in the Guernsey market place independently of pre-notified promotions and price/ product changes from C&W/ Sure;
- **Stifles innovation because other licenced operators are able preview all the new products offered by Sure, which reduces Sure's incentive to innovate** – NOT PROVEN – All operators, especially C&W/ Sure, are proactively and independently developing and launching innovative new products, services and tariffs, to differentiate and drive choice and value in the Guernsey market; and
- **Prevent the functioning of a dynamic market by preventing quick pricing response to changing conditions** – NOT PROVEN – Guernsey market mobile pricing and product offerings has been strongly dynamic and competitive driven by the availability of simple mobile number portability and not in response to pre-notifications from C&W/ Sure.

GAL believes that the notification period for dominant operators should not be excessive and should be sufficient to enable the OUR and interested parties to assess whether the proposed product/ tariff changes or offers from the dominant operator are fair and not anti-competitive. GAL would concede that it may be appropriate for the OUR to assess whether the current 21 day pre-notification period remains appropriate and revise the pre-notification period accordingly.

Whilst GAL understands that the application of the Fair Competition condition 32 could be considered as an alternative to achieve the equivalent protection against potential anti-competitive and predatory pricing by the dominant operator, however since Guernsey's competition legislation has yet to be finalised, the GAL is not clear how the provisions of condition 32 would be effectively applied in practice. For instance, GAL would seek clarification from the OUR regarding the criteria and conditions that would be used to assess potential anti-competitive behaviour, along with the resources and processes to be applied to assess and take prompt action address incidences where anti-competitive or inappropriate behaviours are identified.

GAL believes the current condition 31 pre-notification requirements should be retained and maintained for dominant operators until the forthcoming Guernsey competition legislation is finalised and enforceable. Only at this stage, does

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GAL believe it is appropriate to consider relaxing or removing the condition 31 pre-notification obligations on dominant operators, specifically in the case of C&W/ Sure in the mobile sector.

Condition 35 – Customer Support – GAL Specific

GAL is compliant with this condition and since customer support is a key element of the mobile operator's service offering, GAL firmly believes that consumer demand and competitive pressure and not formal regulation will ensure on-going compliance. GAL would therefore support the removal of the condition from the revised GAL licence.

Condition 36 – New Services – GAL Specific

GAL is fully compliant with what was an incentive condition for GAL's start-up/ launch phase to stimulate increased and sustained competition. GAL has demonstrated that since launch it has proactively led the development and launch of innovative products and services, for instance, free SMS on pre-pay, 6 month post pay contract products, SIM only products, Homephone, WiFi enabled 3G broadband modems, free incoming roaming etc. GAL firmly believes that the strong consumer demand and competitive pressure within the Guernsey mobile market will ensure that GAL continues to innovate and launch exciting new and radical products and tariffs without the need for formal regulation. GAL would therefore support the removal of the condition from the revised GAL licence.

Condition 37- Price Reductions – GAL Specific

GAL is fully compliant with what was an incentive condition for GAL's start-up/ launch phase to stimulate increased and sustained competition. GAL has demonstrated that since launch it has proactively led the development and launch of innovative and radical tariffs which have permanently driven market pricing down beyond the target level, for instance, free SMS on pre-pay, radical reductions in data, roaming and international calls, free incoming roaming etc. GAL firmly believes that the strong consumer demand and competitive pressure within the Guernsey mobile market will ensure that GAL continues to innovate market pricing and tariffs to drive further consumer value without the need for formal regulation. GAL therefore would support the removal of the condition from the revised GAL licence.

Condition 38 – Open Portal – GAL Specific

GAL has fully complied with the requirements to establishing the open portal and committed to maintaining and developing the open portal on an ongoing basis. GAL does not object to this condition being maintained in the revised GAL licence.

Term Limits

GAL has no strong preference on the approach to be adopted to align the term of all Guernsey operators' licences.

GAL is aware that OFCOM is considering migrating to non-time limited licences for UK operators. Since telecommunication markets are highly dynamic and the OUR has already recognised the benefits of migrating to technology neutral licences for Guernsey operators, then GAL would support the removal of time limits from Guernsey mobile operators' licences. Such a non-time limited approach to licence terms would provide operators the flexibility to

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offer, develop and migrate to the most appropriate technologies and services to meet consumer demand, rather than be constrained to operate legacy networks and services based on rigid historic licencing obligations.

GAL would suggest that revised non-time limited licences includes a minimum term, say 5 years to ensure the operators' commit to implementing and providing services for which they have been granted licences, with a minimum notice for termination, say 3 years, to protect consumers and provide sufficient time to migrate to alternative service providers.

We trust our comments meet with your approval and we would welcome the opportunity to actively participate and support the further phases of the OUR's Review of Mobile Licence conditions. In the meantime, please do not hesitate to contact me if you have further questions in this regard.

Yours sincerely

A handwritten signature in blue ink that reads 'James Wild'.

James Wild
Head of Regulatory Affairs – Channel Islands
Guernsey Airtel Limited