

# EXECUTIVE COUNCIL

## PUBLIC

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| <b>Title:</b>                | Telecommunications Individual Operating Licence – Final  |
| <b>Paper Number:</b>         | 42/17  |
| <b>Date:</b>                 | 15 March 2017  |
| <b>Responsible Director:</b> | Attorney General   |
| <b>Report Author:</b>        | Director of Central Services<br>Attorney General   |
| <b>Portfolio Holder:</b>     | MLA Roger Edwards  |
| <b>Reason for paper:</b>     | This paper is submitted to Executive Council:<br><br>For policy decision   |
| <b>Publication:</b>          | Yes (paper only at this stage)   |
| <b>Previous papers:</b>      | 174-76 Telecommunications Exclusive Operating Licence<br>223-15 Telecoms Licence   |
| <b>List of Documents:</b>    | Appendix A: Individual Operating Licence (not yet public)<br>Appendix B: Side Letter between FIG and Sure (not yet public) |

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### 1. Recommendations

Honourable Members are recommended to:

- (a) Approve the Individual Operating Licence with Sure South Atlantic Ltd (Sure) and the associated Side Letter which covers some points of clarification and agreements that fall outside of the licence;
- (b) Authorise the Director of Central Services to sign the Licence and the Side Letter with Sure as soon as practical;
- (c) Note the improved proposal from Sure regarding the timing of future broadband data increases and the expansion of mobile coverage for the Camp;
- (d) Note the key performance indicators (Schedule 1) and price control mechanism (Schedule 3) within the licence document;

- (e) Approve the establishment of a Technology Development Group tasked with overseeing the development of a long-term vision for the telecommunications needs of the Falkland Islands with a particular focus on facilitating economic development;
- (f) Develop a communications strategy to ensure that the public are fully informed about the content of the licence and the process that has been followed to arrive at the final licence.

## **2. Additional Budgetary Implications**

None

## **3. Executive Summary**

- 3.1 Members are asked to approve the signing of the Individual Operating Licence (Appendix A) with Sure. This will provide Sure with an exclusive licence for the provision of fixed line telephone, broadband and mobile phone services in the Islands for a period of 12 years commencing retrospectively on 1 January 2016. The licence has a two-year notice period, with the ability for either Sure or FIG to serve notice at any point after the start of the tenth year of the licence.
- 3.2 The Individual Operating Licence (Appendix A) and the Communications Bill (passed by the Assembly on 26 January 2017) are the culmination of a project of the Telecommunications Working Group that started in 2014. In December 2015 (paper 223/15) Executive Council gave approval for this licence to be negotiated with Sure with further direction provided by Members following the Select Committee hearings which were held during November 2016.
- 3.3 There are no resource implications associated specifically with this licence; however FIG's regulatory burden in association with the licence should be noted.

## **4. Background**

- 4.1 In late 2014, surveys of residential and business customers were conducted in order to identify priorities for the future provision of telecommunications services in the Falkland Islands. This was conducted alongside a strategic review of telecommunications by the external consultants, Cartesian and Prieskel.
- 4.2 Following the strategic review that reported in March 2015, a number of options were considered for the future of telecoms provision in the Falkland Islands. These options included:
  - Serving notice on Sure (as the incumbent operator) and running a competitive process for a new exclusive licence following the expiry of the five-year notice period;
  - Unbundling the provision of telecoms services in the Falklands and introducing some element of competition;
  - Structural separation of wholesale (international satellite connectivity) and retail (service to consumers) elements;

- Nationalising the telecoms service;
- Negotiating with Sure directly for a new exclusive licence against a set of defined priorities.

4.3 In April 2015, Executive Council agreed that Sure should be formally invited to submit a proposal to meet the priorities identified through the strategic review (Paper 37/15, 11 March 2015). A number of essential service improvements were identified that must be delivered under a new licencing arrangement – alongside other negotiating points. Executive Council noted that if these essential service improvements could not be agreed with Sure, then other options would be re-considered.

4.4 In response to this request, Sure provided an initial proposal in June 15. Following this, there have been a number of negotiations between FIG and Sure; and improved proposals from Sure that more completely address the priorities identified by consumers.

## 5. Final Proposal from Sure

5.1 The final set of discussions occurred in early February 2017, with changes to the draft licence agreed in principle with Sure. These discussions resulted in an improvement in the service improvements when compared with the previous offer from Sure, in two key areas.

- First, an earlier increase in data allowances (brought forward to July 2018) and an additional quantum of data increase in July 2019.
- Second, an expansion of the mobile network coverage in the Camp to include additional areas of East and West Falkland.

All of the service improvements agreed with Sure would be delivered solely through investment by Sure: i.e. at no cost to FIG and with no real-terms increase in cost for consumers.

5.2 Different commercial and technical proposals were considered by Sure and FIG in terms of the benefits that could be delivered and overall cost of ownership. This included different technological options to provide the international satellite link. The final proposal from Sure offers significant increase in data allowances in the period to 2019 with no increase in price. This is summarised in Table 1, below.

| Package                      | Basic       | Low user    | Bronze      | Silver       | Gold         | Platinum     |
|------------------------------|-------------|-------------|-------------|--------------|--------------|--------------|
| Monthly Price                | £15         | £37         | £75         | £180         | £300         | £425         |
| <i>Data Quota 2015 (GB)</i>  | <i>0.70</i> | <i>2.00</i> | <i>5.15</i> | <i>10.50</i> | <i>18.75</i> | <i>31.25</i> |
| Jan 2016<br>Data Quota (GB)  | 1.5         | 4.5         | 9           | 22.5         | 37.5         | 52.5         |
| Jan 2017<br>Data Quota (GB)  | 2           | 6           | 12          | 30           | 50           | 70           |
| July 2018<br>Data Quota (GB) | 3           | 9           | 18          | 45           | 75           | 105          |
| July 2019<br>Data Quota (GB) | 3.15        | 9.5         | 19          | 47           | 79           | 110          |

**Table1: Broadband Data Monthly Allowances**

- 5.3 Further, a joint commitment between Sure and FIG has been agreed to run a joint procurement exercise in 2018 to test whether the current satellite provider, or alternative providers, could offer increased bandwidth at a similar price level. Sure have agreed that any such increases in international capacity would be passed onto consumers in full. A more strategic review will be conducted in 2019 to assess longer-term provision on satellite capacity to the Islands; and would be undertaken as part of the Price Cap review in early 2019.
- 5.4 Empowering consumers to manage additional data requirements in month is also addressed in the draft licence with a set of measures to address the issues of excessive overage charges. These measures include a web portal that requires consumers to ‘opt in’ to overage charges and the introduction of a new service that would enable consumers to purchase additional data bundles should they require additional data in any particular month.
- 5.5 Finally, the new licence would substantially extend the existing 2G mobile network across most areas of the Camp and introduce 4G data mobile network in Stanley, MPC, Goose Green, Port Howard and Fox Bay. The revised proposal from Sure includes an additional four sites in the Camp over and above those previously agreed, namely:
- Drone Hill –Lafonia, East Falkland
  - Green Hill – wider Port Howard area, West Falkland
  - Leicester Hill – wider Fox Bay and surrounding area, West Falkland
  - Inlet Hill – Chartres area, West Falkland

**6. Options and Reasons for Recommending Relevant Option**

- 6.1 The key components of the negotiated offer from Sure were agreed by Executive Council in December 2015 (Paper 223/15, 16 December 2016). Full details can be found in paper 223/15 but in summary Executive Council agreed that:
- The agreement in principle between FIG and Sure that was reached in December 2015 meets the priorities as approved by Executive Council in April 2015 in terms of broadband data increases, addressing bill shock, and increasing the mobile phone network (paper 37/15)
  - The main terms of the new licence would provide significant improvements compared with the current telecoms provisions;
  - The approach to regulation should be based on a price control mechanism within which Sure is obliged to make investments in service improvements without increasing charges to consumers;
  - The inclusion of handover arrangements would provide a structured approach to the management of exit from the new licence and ensure that the transfer of responsibilities and assets from Sure to a new operator would be clearly defined at the start of a new licence.
- 6.2 These components form the basis of the work on the new exclusive licence and Communications Ordinance; with the outstanding issues being discussed between FIG and Sure in the period between January and September 2016.

- 6.3 The decision now facing Executive Council is whether to agree that the new licence should be signed. The only other practical option at this stage would be to serve notice on Sure and launch a competition for other potential operators to bid for a new licence.
- 6.4 Assuming a new licence is signed, the price cap mechanism that operated under the previous licence has been largely carried over to the new licence, with a number of refinements, most notably to the treatment of mobile telephone packages and pass-through of certain costs. The price cap restricts the prices that can be charged to customers, while retaining the incentive for Sure to make efficiency gains, and limiting the administrative burden on Sure and FIG. Broadband internet services are now regulated under a separate service obligation guaranteeing set improvements in service and specifying maximum prices.
- 6.5 Alongside the licence, a side letter has been prepared to formalise the agreements with Sure in five important areas, namely:
- Arrangements for the level of management fee that can be transferred between Sure South Atlantic and its parent company in terms of the various support it receives as part of the group structure;
  - Provision of balance sheet and other information to the Regulator;
  - Change of control provisions;
  - Expanded mobile network;
  - Increasing future satellite capacity
- 6.6 The four-year price cap concludes at the end of 2019. To ensure that the longer-term needs of the Islands are articulated and addressed, a longer-term strategy is needed. The rapid pace of technological change means that it would have been inadvisable to commit to a particular solution beyond that point within the licence. Rather, it is proposed that a Technology Development Group is established to assess the longer-term needs of the Islands with a particular focus on enabling economic development. This group will be chaired by the Chief Executive with suitable membership from the business community.

## **7. Resource Implications**

### **7.1 Financial**

None

### **7.2 Human Resource Implications**

No direct HR implications but a strong dependence with the appointment of a suitably-qualified and experienced regulator.

### **7.3 Other Resource Implications**

None

## **8. Legal Implications**

None

## **9. Environmental & Sustainability Implications**

None

## **10. Significant Risks**

- 10.1 The effectiveness of the new licence relies on an effective regulatory regime. The mechanism and principles of this regime have been established, and while the recruitment of a regulator is underway, it is yet to be completed. The Chief Executive and Director of HR have prioritised this recruitment over the next few months.
- 10.2 In the meantime, additional expertise and resource will be provided to augment the existing regulatory capacity. This will include economic support on Price Cap, a secondment from within Government to coordinate the necessary work and external technical assistance where required.

## **11. Consultation**

- 11.1 There was significant consultation with business and residential customers in 2014/2015; regular discussion with the Chamber of Commerce during the process; and evidence and opinion was gathered during the Select Committee stage of the associated Communications Bill.