



BILLET D'ÉTAT

II
2000

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B I L L E T D ' É T A T

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I have the honour to inform you that a Meeting of the States of Deliberation will be held at the **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **26th January, 2000**, immediately after the Meeting of the States of Election already convened for that day.

STATES BOARD OF INDUSTRY**REGULATION OF TRADING UNDERTAKINGS**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

20th December, 1999.

Sir

1. REGULATION OF TRADING UNDERTAKINGS

On the 27th May, 1998 the States resolved to agree in principle to the commercialisation of the Guernsey Electricity Board, the Guernsey Post Office Board and the Guernsey Telecommunications Board as set out in a letter dated 23rd April, 1998 from the Advisory & Finance Committee.

The report to the States at that time recognised that the introduction of a new and effective system of regulation is essential if the community is to enjoy the benefits of a decision to commercialise the three Trading Boards. The Board of Industry was charged with addressing this issue.

Having commissioned advice from consultants KPMG and consulted with the three Trading Boards and having worked closely with the Advisory & Finance Committee and the Civil Service Board it sets out below its considered view on the need for regulation, the form it should take and the new roles and responsibilities which will arise from its recommendations.

Whilst this report is set against the background of the 1998 Debate and subsequent consultations, it also recognises the recent developments within the telecommunications world and accepts the need for a different approach to that sector as recommended by the States Telecommunications Board's consultants Analysys and which are being progressed by the Advisory & Finance Committee. Accordingly reference to commercialisation within this Report should also be taken to include the type of liberalisation proposed for Guernsey Telecoms should that approach be favoured. The proposed regulatory system is flexible and robust enough to cope with a wide variety of options including the States not retaining ownership of the operator licensed to provide monopoly telecoms services.

1.1 The Need for Regulation

The principle that those responsible for setting, assessing, and controlling the performance standards of any service should be independent from those delivering the service is widely accepted. However, in direct contrast to this principle, existing legislation provides the Trading Boards with certain responsibility and power to regulate themselves, their industry and certain activities of their would be competitors.

While this approach may have served the community well in the past, it is questionable whether it remains appropriate today and is inconsistent with “best practice” world-wide.

Even without commercialisation the ability of any group of individuals to cope with the pressures of running a major business while at the same time being involved, to some degree, in the process of regulation is a formidable task. Very few advanced administrations now expect the same body of individuals to operate monopoly organisations with the pressures of trying to break-even or make a profit, manage the aspirations of their workforce, respond to competition from other administrations and the private sector in a fast changing world – and at the same time balance carefully the needs of its consumers and its competitors.

Against this background the Board believes that at the end of the Twentieth Century the roles of operators and regulators should be separated. The poacher should no longer be the gamekeeper. Furthermore, whatever scenario is favoured by the States, including the status quo, the case for independent regulation is compelling.

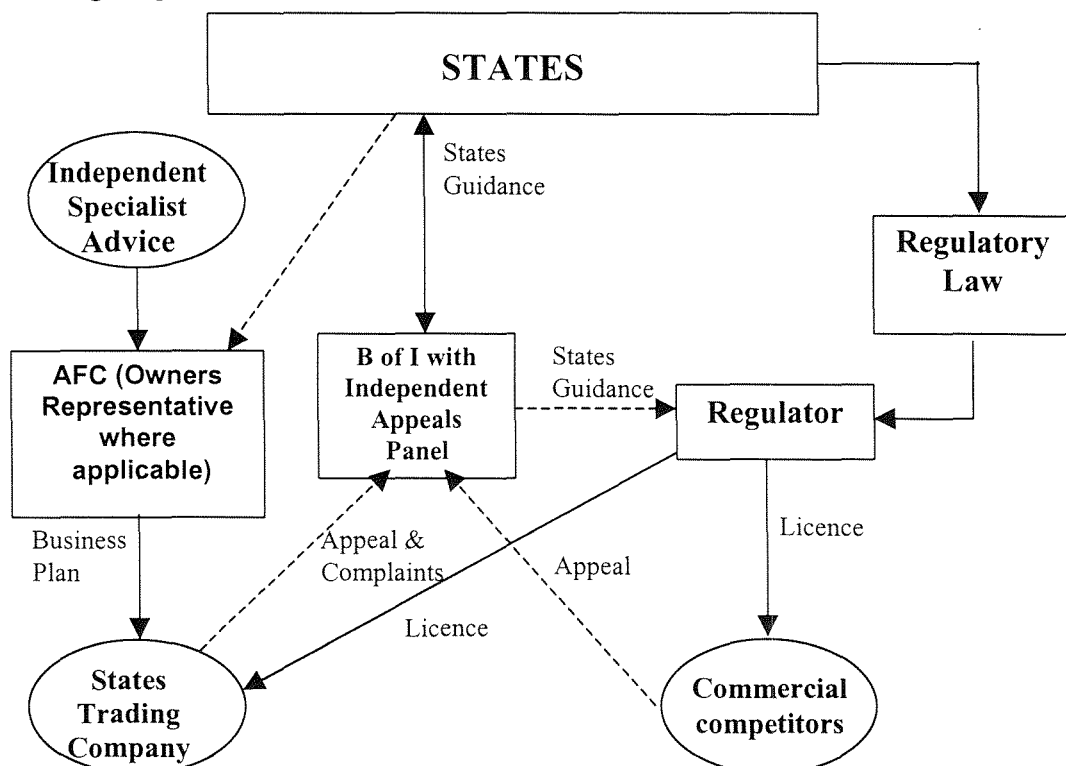
Both commercialisation generally and the liberalisation proposed for telecommunications in particular makes that separation essential for a number of reasons.

1. For some of the trading operations the absence of competition will mean that there is no competitive pressure to operate in the most efficient manner possible. Regulation however provides the benchmark for such organisations to aspire to.
2. Commercialisation puts pressure on the management to deliver improvements which may be reflected in price or quality of service or both. The Universal Service Obligation (USO) i.e. the social obligation to provide a minimum level of service to all customers, is likely to come under pressure in these circumstances. Regulation has a role in ensuring that the social objectives set for the licensed operators are met.
3. The Post and Telecommunications Boards face substantial competition from independent operators (e.g. courier companies in Posts, and the Internet and international carriers in Telecommunications). Regulation will ensure that profits received from the monopoly area are not used to allow unfair competition in the non-monopoly areas. For so long as the Trading Boards are granted a monopoly it will need to be regulated.

2. FRAMEWORK FOR REGULATION

Any approach to regulation will need to address the roles of and the relationships between the following parties:

- The overall institutional framework outlined in this section is portrayed by the following diagram:



In broad terms the proposed approach works as follows:

The regulator would initially:

- set price and service targets (in a way which would provide the owner with a reasonable return);
- manage the introduction of competition;
- manage this relationship through a licence granted under a regulatory law;
- licence commercial competitors; and
- act as arbiter on any disagreement over interconnection prices between the licensed operators and their competitors.

All licensed operators or commercial competitors will have a right of appeal against decisions by the regulator which will be adjudicated upon by a panel of appropriately skilled independent individuals.

Consumers wishing to complain about the activities of an operator must first exhaust the internal complaints processes and submit to mediation by the Board of Industry's Consumer Affairs Department. If this fails to satisfy the customer then the regulator will act as the arbiter of last resort.

This part of the framework has been designed to create the rules under which the licensed operators must operate while the next part seeks to develop an approach which will aid/require them to operate as effectively as possible within these rules.

Where the States retains ownership of the monopoly provider, the role of **owner's representative** will be undertaken by the Advisory and Finance Committee who on behalf of the States will seek to drive the States Trading Companies to operate as efficiently as possible within the rules set by the regulatory process. The States Trading Companies will provide the Committee with a strategic plan and annual reviews containing quantifiable deliverables. Having examined the plan with the aid of expert advice the Committee will decide whether the proposals provide an appropriate return to the States.

It is essential for the system's success to develop the right relationship between the States as both owner/government and the regulator. With this in mind it is recommended that:

- The regulator should be provided with a high degree of independence from the States.
- The regulator should be appointed as a statutory official for a period of five years with the States having the right to terminate his contract limited to reasons of great importance e.g. incapacity or serious misbehaviour such as financial crime or gross incompetence.

- The States would vote on whether or not to accept the name of a suitable regulator recommended by the Board of Industry.
- The States will provide the regulator with “States guidance” on the development and/or structure of a particular sector. The regulator will receive this guidance through the Board of Industry thus preserving the regulator’s independence. The regulator would then consider how best to translate States guidance through the provisions of licences and/or the conditions of those licences.

The issues involved in developing this framework, alternative approaches that were explored and the details of the system recommended are now explored in greater detail.

3. ROLE OF THE OWNER/SHAREHOLDER

The Advisory & Finance Committee has yet to report with detailed proposals for the status and structure of States Trading Companies but the broad principle of how the role of owner/shareholder might be fulfilled is as follows.

In the private sector it is the owner/shareholder of a company that drives it to develop a financial discipline that leads to greater efficiency in its operation. Under the new arrangements where the States retain ownership, it will need to fulfil the role of a private sector shareholder in demanding performance from the management of the States Trading Companies.

It is envisaged that this role will take the following form:

- The States Trading Companies provide a strategic plan every three years together with an annual review which would include both details of the strategy that the Companies wish to undertake, major operational decisions and quantifiable performance indicators including a return to the owner.

The return to the owner is likely to be in the form of a dividend based on return on capital employed.

- The owner’s representative then reviews the plans and either accepts the contents or requires revision of the actions or performance of the Company (this financial discipline works in conjunction with the control of prices through regulation or competition to drive the States Trading companies towards efficiency).
- The owner’s representative would also consider which areas of non-core business the States Trading Companies should be involved in.

Having explored with the consultants how best the role of owner’s representative might be undertaken on the part of the States, the Board concluded that the Advisory and Finance Committee represents the most appropriate body.

The possibility of contracting out the role to an investment management company was considered but dismissed as a step too far for a variety of reasons and the possibility of using the Board of Industry was also dismissed because of its role as the promoter of industry within government and because its mandate and experience makes it more appropriate to host the appeals process.

It was recognised however that the task of effectively reviewing the States Trading Companies' strategic plans to see if they were both sufficiently demanding and provided an appropriate return, requires private sector expertise and manpower which the Committee simply does not have. Accordingly it is likely to be necessary to contract in outside advice on this issue. Such specialist advice would also be needed in considering any plans to develop new lines of business by the Trading Boards and to assess their risk and potential commerciality.

4. APPEALS/COMPLAINTS

The original model of regulation set out in the policy report of June 1998 made no provision for an appeals process. The Board believes that this is essential.

In the absence of any form of appeal there is no way of addressing the fact that a regulator may make a mistake in his decision or interpretation. Furthermore, the Committees believe that it would be short sighted to introduce legislation specifically for State-owned enterprises because the States may wish to extend the principle of regulation to other appropriate sectors within the community in the future. In those circumstances the right of appeal by commercial operators against the regulator's decision would be essential.

Unlike the UK and other countries, Guernsey does not have a Monopolies and Mergers Commission (MMC) or an Office of Fair Trading (OFT).

In the UK these bodies act as "court of appeal". The MMC in relation to referrals from the regulator and companies and the OFT for matters affecting competition.

Having reviewed a number of options the Board proposes that the most appropriate method for handling appeals would be for the law to make provision for an independent panel of experts.

The Board of Industry would undertake the role of "honest broker" responsible for convening a panel for each appeal. The most appropriately qualified individuals would be selected, in each case ensuring the existence of expert knowledge on the appeal body. In many respects it is proposed that this system should mirror the approach set out in The Industrial Disputes and Conditions of Employment (Guernsey) Law 1993 which provides for the setting up of an industrial disputes tribunal by drawing on three qualified individuals. In these circumstances the tribunal has quasi-judicial powers and makes final decisions.

It is proposed that in the case of regulation three individuals should be sufficient to sit in judgement on each appeal and that the cost should be met by the regulatory process.

Beyond those circumstances where a States Trading Company or indeed a competitor in relation to interconnection issues will be aggrieved, there will also be a need to address how best to deal with customer complaints.

The use of a special panel or a newly created ombudsman were options explored with the consultants, however, the Board wishes to minimise the bureaucracy involved with the new approach.

Accordingly the following approach is recommended;

1. Any customer with a complaint should first attempt to exhaust the internal complaints procedure of a licensed operator (it should not be the role of the regulator to deal with trivial complaints from consumers when a telephone call to the operator might resolve the matter instantly).
2. In the event that a customer is not satisfied by the licensed operator's response, then reference should be made to the Board of Industry's Consumer Affairs Department which has considerable experience of resolving the majority of such cases to a customer's satisfaction.
3. Where, having reviewed the complaint, the Board of Industry and its staff consider that a customer had sufficient validity to refer the complaint to the regulator, then the regulator would act as a final arbiter.

It is proposed that the power of the regulator will be sufficiently well defined to avoid lengthy disputes. However, in relation to both appeals and complaints the parties concerned would enjoy access to the Courts on points of law.

5. STATES GUIDANCE

The services provided by the three Trading Boards are of strategic importance as they:-

- provide a basic service for which consumers are in the most cases dependent upon; and
- provide a service to other industries. The price and quality of those services determines the attractiveness of Guernsey as a base for business and commerce and will influence its future economic development. For example the finance industry is dependent on the existence of efficient telecommunications links, mail-order operations such as the postal flower sector rely on the postal service and so on.

The States will want the regulator to adopt policies in relation to the licensed operators which in turn deliver the Island's economic, social and environmental strategic aims. Important strategic issues may include for example the use of non-polluting fuel or encouraging the development of a "multi-media Island".

The regulator has a critical role in ensuring that such objectives are achieved for example by requiring infrastructure services to be maintained and developed to meet the Island's needs and by providing additional licences for competitors setting the conditions of licences to achieve these objectives. The regulator therefore will not operate within a vacuum but against a background of "States guidance" which he will be bound to consider.

Given that regulation is particularly necessary where there is no competition the regulator will need States guidance as to what path, if any, it wishes to develop regarding the liberalisation of one or more of the three sectors. It may be for example that in one or more sectors the States would wish to provide guidance to the regulator which will encourage the maximum number of competitors that:-

- the Guernsey market will sustain; and
- is consistent with States strategic plans on the liberalisation of each sector.

Given the importance of maintaining an independent regulator and at the same time ensuring that the Island's political strategic aims are met, how will guidance be delivered?

The Board believes that the appropriate vehicle for establishing States guidance should be the Corporate and Strategic Plan. Each year this would address the way in which strategic issues are to be translated into guidance for the regulator.

Expert advice may well be needed in assisting the States to form opinion on specialist issues and this analysis could be provided by the consultancy companies assisting the regulator (see later). The Board of Industry would commission this advice and pass it back to the States. In this respect it is important that advice on regulatory issues is obtained from a different source to that sought by the Advisory and Finance Committee on guiding the ownership role.

Finally, it is of paramount importance that States guidance is limited to those issues impacting upon the **strategic direction of the sector** and do not comprise detailed directions on the regulation of a particular company. That is the role of the independent regulator.

6. LEGAL FRAMEWORK

The introduction of commercialisation will make it necessary to introduce new laws which will:

- give any licensed operator the necessary statutory powers needed to enable it to provide services
- define the role and responsibilities of the regulator.

Each licensed operator will need new legislation to allow it to exercise powers essential to its operation e.g. the power to break open the roads, rights of entry to inspect equipment etc. The differing requirements of legislation in each of the three sectors is such that three separate **operational** laws will be needed.

It is proposed that the **regulation** is best achieved by enacting a single piece “of umbrella” legislation covering all the activities of licensed operators. This is preferred as a more flexible alternative to addressing the regulatory issues separately in each service area. Changes in regulatory requirements could more easily be achieved by changing one piece of umbrella legislation rather than separate legislation for each service area. Such legislation could more easily be extended to cover other commercialised States functions or operations in the private sector.

Finally, the umbrella law will provide clear **transparency** of the remit of the regulatory authority – one of the most important principles in the design of a successful regulatory system.

The proposed legislation will need to address a number of important issues including:

- the role of the regulator;
- the terms and conditions of the appointment of the regulator;
- conditions which forbid the regulator to use the position for personal gain or act in a way which is not in the interest of Guernsey or the sector;
- the powers of the regulator;
- the ability of the States to dismiss the regulator. In order to preserve the independence of the regulator, it is recommended that this power be limited to a number of criteria and subject to a two thirds vote of the States (as is required for constitutional issues); and
- provide powers for the regulator to issue licences.

7. ROLE OF THE REGULATOR

This section describes the role of the regulator and, equally important, the areas in which regulation has no part. It is envisaged that there will be two phases to the regulatory work. The initial phase will involve a considerable amount of work and market analysis leading to the issuing of licences. The second phase is the less intense year-on-year management of licences and response to change.

7.1 **Competition**

On the assumption that the regulator will receive States guidance to encourage the maximum number of competitors that the Guernsey market will sustain, then one of the initial tasks for the regulator will be to conduct a market assessment of:

- the number of competitors that can be sustained in each of the sectors; and
- the number of sub-markets that exist within them.

Having decided upon the number of competitors that can be sustained, the regulator will be in a position to decide who will be issued with licences (and to give reasons why competition may be limited) and a period for which those licences are valid.

In areas where a monopoly structure is felt to be appropriate, the monopoly licence will be provided for a limited period with periodic review of whether competition should be introduced.

Where the regulator believes that a number of competitors can be sustained, he will decide how many licences can be issued.

7.2 **Prices and Quality of Service**

One of the main roles of price regulation is to protect consumers from a lack of competition in terms of the prices and quality of service that is provided and to provide maximum prices and minimum service levels which mimic the discipline of competition. The regulation of prices and service levels are in many ways analogous, as a decrease in the level of service has a similar impact on the regulated company as an increase in prices.

The areas that will be price regulated are those where competition is regarded as insufficient or where a “level playing field” is required for providing access by competitors to core services on a “wholesale” basis. Accordingly an initial task for the regulator will be to conduct a market assessment to decide in which areas price regulation is appropriate.

Once the regulator has decided which areas will be price regulated he will then need to set prices. In this connection the regulator does not fix individual prices. He sets maximum price levels and determines the framework for price setting. The recommended process for setting price regulation is as follows:

- the licensed operator to propose the price to the regulator with justifications; including a full statement of costs incurred
- the regulator reviews the price with reference to international practice, the conditions that apply in Guernsey;
- the regulator either accepts or makes a revised proposal on price;

- if the operator does not accept the decision of the regulator it may utilise the appeals mechanism outlined in the previous section.

It should also be noted that:

- referring matters to the appeals mechanism is not in the interests of either the operator or the regulator and in most cases agreement can be expected to be reached; and
- the regulator will make an allowance in the price which is set to allow for a return to the owner. This will require the regulator to make an estimate of the return that the owner will require from investment in setting the price, **which should be made publicly available**. This estimate should then be built into the price level set.

The regulator also has a role in the setting of interconnection charges between the licensed operators and the commercial competitors e.g. the charge the licensed Telecoms operator might make to another service provider for use of part of their network. Competitors and other service providers will need access to the monopoly services and the regulator has a role in ensuring that the “interconnection charges” for such access is fair and based on the principle of a “level playing field.” However, this price should, in the first place, be subject to market negotiation between the licensed operator and the competing service provider seeking interconnection. The regulator would act as arbiter if the two parties failed to reach a mutually acceptable agreement. The regulator should provide guidelines on the setting of interconnection prices which the two companies should follow. This will aid the companies, reduce the potential for disagreement and reduce the need for the regulator to act as arbiter.

The universal service obligation (USO) provided to the regulated companies should be set by the regulator, although this would be the subject of States guidance.

The regulator has a role in setting quality of service targets and needs authority to ensure that the USO and quality of service targets set are meaningful. To achieve this it is recommended that the regulator be given the power to fine licensed operators for failure to comply with their obligations.

Whilst it may be argued that in some circumstances this would equate to the transfer of credits from one State department to another, it will influence the ability of the licensed operators to meet its business plan targets. It is proposed that the power to fine the operators should be written into the legislation providing for the operation of the regulator.

7.3 Cross Subsidy

One of the most important principles for regulation is that profits made from a government’s provision of monopoly status are not used **unfairly** to cross-subsidise competing against private sector providers.

There may be limited circumstances in which a form of cross-subsidy is beneficial, but **unfair** cross-subsidy should not be allowed to distort competition. The most practical way to ensure that unfair cross-subsidy is prevented is to insist on a total accounting separation between the monopoly part of the business and the competitive sectors. This places a requirement on the regulator to ensure that this separation is appropriately achieved, an issue which is addressed below.

While Guernsey Telecoms and the Guernsey Electricity believe that they already have accounting approaches that could handle the accounting separation required, Guernsey Post would need to revise completely its current approach. Given the high levels of manpower which handles different products in the postal sector, this is likely to require the introduction of an activity based costing (ABC) approach.

7.4 Areas Outside the Influence of the Regulator

At the beginning of the review of regulation some parties assumed that the regulator could potentially play a role in determining the core set of services which each licensed operator would undertake (approximately replicating the services that they currently provide).

However, the consultants advised that this is typically a role for the owner of the assets of the licensed operator ultimately to undertake, rather than the regulator. However, the regulator would specify the set of services which are to be provided on a monopoly basis and those which are to be included in the USO.

The only time when the regulator may play a role is if he identifies that a proposed service outside of the core area might threaten to financially destabilise the licensed operator to an extent that the USO would not be met. In this event it will be a legal requirement for the owner's representative of the licensed operator to respond to the concerns of the regulator who will be representing consumer interest.

7.5 Transparency of Regulatory Operation

International experience has demonstrated that if a regulator is to succeed and be accepted then his operations and decisions must be transparent. In order to achieve this it is recommended that:

- the regulator should, where possible, and subject to commercial confidentiality, make all reports public. This should include both the outcomes of the regulator(s) deliberations and the basis of recommendations and decisions; and
- the regulator should provide an annual report to the States, which should be published in full without amendment.

7.6 **Structure of a Regulatory Authority**

Considering options for the most appropriate regulatory authority, the Board sought a structure that:

- was as simple as this complex subject could allow;
- minimises resources and bureaucracy;
- provides a common and co-ordinated approach to regulation on the Island;
- delivers a system that was transparent; and
- creates a structure that might be readily extended to other sectors if commercialisation or the scope of regulation was extended.

The Board concluded that the Island was simply too small to follow the pattern favoured by some much larger countries of individual regulators for each sector each supported by a large bureaucracy of specialist staff. Guernsey could not sustain such an approach – even if it could find and attract the appropriate people.

Having said this, it was recognised that in certain areas the requirements for regulation of each of the current Trading Boards is different. Particular note was taken of the conclusion reached by Analysys in relation to telecommunications:-

“Independent regulation is essential

There is no doubt that independent regulation will be vital as reforms take place. The regulator’s remit will be to stimulate investment in the telecoms network infrastructure, ensure the delivery of world class competitive services and monitor pricing to guarantee that it remains in line with international benchmarks. This role will rely on the regulator developing fast and flexible mechanisms for licensing.

The telecoms regulator will have to manage more than just telecoms regulation. As convergence and e-commerce develop, the interfaces between telecoms regulation, broadcast regulation and taxation will become increasingly important and complex. The workload will require a full-time telecoms regulator, a small support team and access to specialist advisors under contract.”

The telecommunications sector poses the regulator with a large number of decisions which will need to be made immediately and the pace of change in that sector is considerably faster than the others. Accordingly this sector will require a heavier workload.

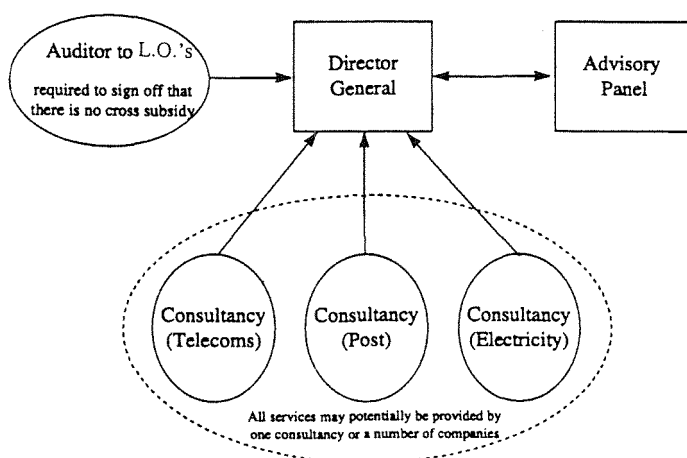
The Board remains committed to the appointment of a single regulator but recognise that in the short term telecommunications issues will dominate the workload. Furthermore, the proposed structure is flexible enough to reflect and adapt to the

different needs at different times of the sectors. In this respect the licence fees will reflect the relative workload of each sector.

Having examined various options put forward by both KPMG and Analysys, the Board decided to recommend an approach involving:

1. a single Director General (DG) of regulation;
2. supported by specialist consultancies;
3. drawing on the advice of an advisory panel; and
4. relying on the licensed operators' external auditors to confirm that there was no unfair cross-subsidy.

7.7 Recommended Structure of a Regulatory Authority



The proposed approach requires a Director General (DG) of regulation who will:

- manage the regulatory process, primarily through working with one or more consultancy companies providing specialist input into the process and ensuring that value for money is obtained;
- provide an initial point of contact and a public face of regulation; and
- ensure that the approach to and stringency of regulation is consistent and conforms to States guidance and legislative requirements.

It is possible that an appropriately qualified DG could manage the process from beyond the Island, however, the preference of the Board is for the DG to be resident in Guernsey. This would certainly assist in terms of personal contact, communication and appreciation of the unique features of Island life.

Whether an appropriate candidate exists locally, or whether a housing licence will be required remains to be seen but the services to be covered by the regulator are of such strategic importance to the Island that the function must be adequately resourced. The DG would not necessarily be expected to have a track record in one or more of the sectors concerned. Rather the ideal candidate would have the following skills:

- general management abilities;
- experience of contracting out and managing inputs from specialist contractors;
- public relation skills;
- an ability to work at all levels up to Chief Executive; and
- an understanding of regulatory policy.

7.8 Consultancy Support

While the DG will make final decisions e.g. on tariff structures, issue of licences etc, he will be supported by specialist input and advice from consultancy companies on an on-call basis.

The principle of using outside specialist assistance has also been applied to the question of ensuring that there is no unfair cross-subsidy between the core-businesses of the licensed operators and any subsidiary activities. It is proposed that the independent auditors of each licensed operator should sign off that no cross-subsidy is occurring. This can be achieved as part of the annual audit with minimal extra work.

7.9 Customer Representation

It is considered important for the DG to have a formal mechanism for taking on the views and representations of consumers and industrial and commercial users on regulatory decisions and the performance of the licensed operators. It is envisaged therefore that the DG will appoint an advisory panel comprising representatives of both domestic and commercial consumers.

The creation of such an advisory panel has a number of advantages in that it will compliment the DG's role by:

- assisting in the managing of the regulatory process;
- providing an initial point of contact and the public face of regulation;
- consider whether regulation is consistent with States guidance; and
- ensure some understanding of the regulatory approach on the Island.

7.10 Support and Accommodation

The importance of independence of the regulatory authority has been stressed elsewhere in this report. That principle has been applied in addressing the question of where to accommodate and how to support the DG.

The Board did consider providing office accommodation within its premises at Raymond Falla House thus allowing existing reception and central administrative and secretarial services to be used. However, on reflection and in particular in the light of discussions with the Trading Boards, it is agreed that independence must be preserved by providing office accommodation and administrative/clerical support at arms length from both the Board and the licensed operators.

In these circumstances while there will be an additional workload for the Board of Industry in acting as “honest broker” and providing a link between the Regulator and the States as laid out elsewhere in this Report, it believes it can discharge its task from within existing resources.

Finally, it should be noted that the DG will be a statutory official appointed by the States but funded by licence fees from trading undertakings. Neither he nor his staff will be States employees and will not come within the remit of the staff number limitation Policy or Civil Service Board in regard to pay and conditions of employment. The law will provide for these to be determined by the Board of Industry.

7.11 Summary of Proposed Regulatory Structure

The key features of a regulatory approach which involve a single DG and advice from a set of specialist consultancies (or a single consultancy if it has skills in each sector) are as follows:

- an independent authority that does not require input from States Departments (thereby securing its independence avoiding the need for the States to appoint and train and accommodate specialist staff);
- a non bureaucratic structure which can obtain specialist input on any area as and when required;
- a cost effective solution with the DG managing the input of specialists on an on-call basis;
- a focal point for regulation and routes for local opinion to be taken account of;
- potential to provide a consistent application of a regulatory approach across the three sectors;
- flexibility to incorporate regulation of further sectors.

7.12 Funding and Support for the DG

The funding of the regulatory process would be met in full by the licence fees.

The main areas of expenditure will be the cost of specialist consultancy, the DG's salary and the funding of any work commissioned by an advisory panel, and office accommodation.

At this stage no attempt has been made to determine the likely salary of the DG nor the likely annual cost of consultancy. KPMG have suggested however that while the annual cost is likely to vary, (ie in the first year will be a period of intense activity with heavy reliance on the consultancies) – the average cost of regulation could be in the region of £350,000 per annum. This sum needs to be put in context and represent just 0.56% of the collective annual turnover (£62m) of the three Trading Boards.

8. Summary of Roles and Next Steps

Summary of Main Roles

Body	Role
Advisory & Finance Committee in relation to States owned Licensed Operators (L.O.'s)	<ul style="list-style-type: none"> - Review of the L.O's strategic plans and annual reviews and setting targets for financial returns. - Deciding on the areas of non-licensed business for the L.O's - Securing the appointment of the L.O's Board and senior management.
Board of Industry	<ul style="list-style-type: none"> - Honest Broker managing the process of appeals against the regulator. - Mediator in the customer complaints process. - Route between the States and the regulator for States guidance. - Route through which the States may seek specialist advice to analyse particular issues.

Appeal Panel	- Arbiter on appeals against regulatory decisions
Regulator	<ul style="list-style-type: none"> - Regulates prices and service levels through the issue of licences. - Ensures no unfair cross subsidy. - Arbiter of last resort of customer complaints. - Arbiter between licensed operators and commercial competitors when no agreement of interconnection
States	- Sets the guidance within which the regulator operates

8.1 Next Steps

If the States approves the recommendations contained in this report then the next steps in relation to regulation of the licensed operators are as follows:-

- the design of appropriate legislation for the introduction of commercialisation and an appropriate regulatory authority. The existing legislation governing the Trading Boards will need to be replaced and new operational legislation introduced. A separate “umbrella” law will also be required to provide the regulator with powers to operate.
- the design of appropriate licences for the introduction of regulation. Considerable international experience exists in the design of licences which will need to be combined with an appreciation of the Guernsey situation and the States objectives for the commercialisation process.
- the selection of a Director General of regulation. It is recommended that this appointment be made on a shadow basis prior to the implementation of commercialisation. The shadow DG would then be involved in the selection of the consultancy company(s) who will provide specialist support for the regulator. The DG may wish to set up, on a shadow basis, an appropriate advisory panel. Given the number of critical decisions that will have to be made upon the introduction of commercialisation (or possibly liberalisation in the case of Guernsey Telecoms), it is essential that the appointment in advance of a “shadow DG” should take place within the first 6 months of 2000.
- the presentation to the States of the legislation necessary for the introduction of commercialisation and regulation and securing Royal assent.

9. OUTSOURCING PREPARATORY WORK

Given the complexity and specialist nature of the whole question of regulatory law, the Central Committees have agreed with HM Procureur that if, subject to States approval, this matter is to proceed at a reasonable pace then it will be essential to obtain outside advice in the drafting of legislation and licences. Accordingly it is proposed that appropriate consultants be appointed to both advise on the drafting of licences and to co-ordinate the preparation of legislation.

In this respect considerable work has been undertaken by some of the Trading Boards in preparing new legislation and this will be valuable in reducing further the time and effort from specialist consultants.

10. RECOMMENDATIONS

The Board recommends the States to:-

- 1] Note that irrespective of whether the Guernsey Electricity Board, the Guernsey Post Office Board or the Guernsey Telecommunications Board are commercialised, liberalised, subject to some other process or continue to operate as at present, there is a need for independent regulation.
- 2] Approve the system of regulation as set out in this report.
- 3] Approve the creation of an independent panel of experts to hear appeals and complaints as set out in section 4 of this report.
- 4] Agree that a single regulatory law be prepared to give effect to the system set out in this report.
- 5] Approve that appropriate operational legislation be prepared providing licensed operators with the powers necessary for them to function.
- 6] Agree the appointment by the Board of a Director General of Regulation on a shadow basis prior to a permanent appointment when legislation is introduced as set out in this Report.
- 7] To note the intention to outsource the initial drafting of legislation and licences to appropriate specialists, funding for which will be met by the Advisory and Finance Committee.

I have the honour to request that you will be good enough to lay this matter before the States, with appropriate propositions, including one directing the preparation of the necessary legislation.

I am, Sir,
Your obedient Servant,
P. T. R. FERBRACHE,
President,
States Board of Industry.

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

21st December, 1999.

Sir,

I have the honour to refer to the letter dated 20 December addressed to you by the President of the Board of Industry on the subject of Regulation of the Trading Boards.

The Advisory and Finance Committee supports the proposals from the Board for the introduction of a regime which is robust and flexible enough to regulate, not only the arrangements for telecommunications which are being proposed by the Committee in a separate policy letter, but also any future transfer of functions from the States such as is being considered for the Post Office Board and the Electricity Board.

I am, Sir,
Your obedient Servant,
L. C. MORGAN,
President,
States Advisory and Finance Committee.

The States are asked to decide:—

- I.— Whether, after consideration of the Report dated the 20th December, 1999, of the States Board of Industry, they are of opinion:-
1. To note that irrespective of whether the States Electricity Board, the States Post Office Board or the States Telecommunications Board are commercialised, liberalised, subject to some other process or continue to operate as at present, there is a need for independent regulation.
 2. To approve the system of regulation as set out in that Report.
 3. To approve the creation of an independent panel of experts to hear appeals and complaints as set out in section 4 of that Report.
 4. That a single regulatory law shall be prepared to give effect to the system set out in that Report.
 5. That appropriate operational legislation shall be prepared providing licensed operators with the powers necessary for them to function.
 6. To agree the appointment by the States Board of Industry of a Director General of Regulation on a shadow basis prior to a permanent appointment when legislation is introduced as set out in that Report.
 7. To note the intention to outsource the initial drafting of legislation and licences to appropriate specialists, funding for which will be met by the States Advisory and Finance Committee.
 8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

STATES CIVIL SERVICE BOARD**DELIVERY OF TELECOMMUNICATION SERVICES FOR THE BAILIWICK
IMPACT ON CURRENT STATES EMPLOYEES**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

21st December, 1999.

Sir,

**DELIVERY OF TELECOMMUNICATION SERVICES FOR THE
BAILIWICK – IMPACT ON CURRENT STATES EMPLOYEES****Introduction**

On 1 December the Civil Service Board was advised of a proposal to radically change the arrangements under which the Bailiwick's telecommunications would be delivered. The Board was subsequently advised that this proposal would be presented to the States by the Advisory and Finance Committee in January and the Board was asked to report at that same meeting on the staffing related issues arising from that proposal.

In general terms the current staffing position is as follows:

1. There are about 260 employees involved in providing the telecommunications services within the mandate of the States Telecommunications Board.
2. All these staff are States of Guernsey employees.
3. All these staff are on pay and conditions determined by a process of collective bargaining with the Civil Service Board.
4. The vast majority of these staff are members of the Public Servants' Pension Scheme and are represented on the Committee which effectively negotiates changes to that scheme prior to formal proposals being placed before the States.

It also needs to be stressed that these staff are vital to the successful delivery of a telecommunications service for the Bailiwick and their involvement, commitment and motivation in the future will also be essential if there is to be a smooth transition from the current States provided service to a service delivered under licence by a private company.

The need for Legislation

In order to achieve the smooth transition from a States provided service to a service delivered under licence by a private company a number of important staff related issues have to be addressed. These issues involve providing a fair balance of safeguards for:

- the 260 or so staff who will cease being employed by the States of Guernsey.
- the company which takes up the licence (it will need skilled labour to deliver the services required under that licence).
- the States of Guernsey in its capacity as the former employer of these staff.

At first sight a simple way of achieving this balance might appear to be making it a condition of any licence that the new service provider has to employ the existing staff on exactly the same terms and conditions that applied at the time the licence was awarded. Clearly, under such an arrangement both the staff and the new employer would be fully safeguarded at the time of transfer and then free to enter into new pay and conditions agreements as subsequent pay reviews fall due.

Unfortunately, this most obvious and simple solution is legally flawed.

The problem is that all contracts of employment specify the names of both the employer and the individual employee. Legally neither party to these contracts can arrange unilaterally for someone else to fulfil the obligations of that contract and in consequence a change in the identity of the employer will necessitate a termination of the existing contract and the execution of a new one.

It follows, therefore, that unless some legislative action is taken by the States to alter this common law position a change in the identity of the employer would raise a number of difficult legal questions which might prevent a smooth and seamless transfer of staff from the employment of the States of Guernsey to the new employer.

Clearly, what the States need to ensure is that:

- all existing staff are guaranteed jobs with the new employer;
- the new employer is guaranteed a workforce that can deliver the services that are to be provided;
- the States (as the former employer) is protected from claims arising from the previous contract which, without legislation, could be triggered even if the employees did take jobs with the new employer.

The legislation required

In the UK the legal problems identified above have been overcome by something known as “The Transfer of Undertakings (Protection of Employment) Regulations 1981.” These Regulations are widely known as TUPE.

In essence these Regulations, which relate to all UK undertakings (public and private sector), ensure that contracts of employment transfer automatically to the new employer when there is a transfer of an undertaking. This means that:

- no employee loses their job as part of the transfer process,
- all pay and conditions of service are maintained,
- the new employer is required to provide pensions arrangements that are broadly comparable to the scheme which the staff are leaving (if the new employer’s scheme is inferior then appropriate compensation for detriment has to be made),
- all collective bargaining arrangements are protected.

In the absence of Island wide legislation similar to TUPE, the Board believes it is both appropriate and necessary to introduce legislation which would achieve the necessary safeguards for the staff of the States Telecommunications Board.

Recommendation

The Civil Service Board recommends that the States of Deliberation should now agree to the drafting of appropriate legislation based on the principles set out within UK TUPE Regulations to safeguard the employment and contractual rights and obligations of current employees of the Telecommunications Board should it be decided to change the way in which telecommunications services are provided for the Bailiwick.

I have the honour to request that you be good enough to lay this matter before the States with the appropriate propositions including one directing the preparation of the necessary legislation.

I am, Sir,
Your obedient Servant,
J. KITTs,
President,
States Civil Service Board.

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

21st December, 1999.

Sir,

I have the honour to refer to the letter dated 21 December addressed to you by the President of the Civil Service Board on the subject of Delivery of Telecommunications Services for the Bailiwick - Impact on current States employees.

The Advisory and Finance Committee supports the proposals from the Board for the protection of employee rights on the transfer of responsibility for the delivery of telecommunications services from the States Telecommunications Board as is being proposed by the Committee in a separate policy letter.

The protection of these rights will be a requirement in any future transfer of functions from the States, in particular those of the Post Office Board and Electricity Board which are currently under consideration.

The Advisory and Finance Committee therefore anticipates that the necessary legislation will be drafted in such a way that the principles of protection of employee rights can easily be extended to cover employees affected by any future transfer of functions.

I am, Sir,
Your obedient Servant,
L. C. MORGAN,
President,
States Advisory and Finance Committee.

The States are asked to decide:—

- II.— Whether, after consideration of the Report dated the 21st December, 1999, of the States Civil Service Board, they are of opinion:—
1. That appropriate legislation shall be enacted based on the principles set out within the United Kingdom Transfer of Undertakings (Protection of Employment) Regulations, 1981, to safeguard the employment and contractual rights and obligations of current employees of the States Telecommunications Board should it be decided to change the way in which telecommunications services are provided for the Bailiwick of Guernsey.
 2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

STATES ADVISORY AND FINANCE COMMITTEE**THE FUTURE PROVISION OF TELECOMS SERVICES FOR THE BAILIWICK**

The President,
States of Guernsey,
Royal Court House,
St. Peter Port,
Guernsey.

21st December, 1999.

Sir,

**THE FUTURE PROVISION OF TELECOMS SERVICES
FOR THE BAILIWICK**

1. INTRODUCTION

This policy letter addresses issues which are fundamental to the Bailiwick's sustainable future development. The Advisory and Finance Committee recognises that IT and ecommerce lie at the heart of Guernsey's economic growth, and in this document the Committee makes recommendations for the successful implementation of an IT and ecommerce strategy.

Section 1 of this policy letter examines the developments to date, referring to the objectives of the IT in Society Working Group's 1999 Policy Statement with regard to the social, economic, technical and legal framework. Section 2 looks at the growth of ecommerce, assessing general trends and those specific to Guernsey's situation and the opportunities and threats which it presents. The final section stresses that making world-class telecoms services widely available, and ensuring that the telecoms infrastructure keeps pace with global developments, are vital if ecommerce is to flourish and the future wellbeing of the Bailiwick is to be secured.

1.1 COMMERCIALISATION

At its meeting in June 1998 (Billet d'Etat X, 1998), the States considered a policy letter from the Advisory and Finance Committee on future arrangements for the provision of postal, telecoms and electricity services, which has come to be known as a process of 'commercialisation'.

The policy letter enclosed a joint report from the Advisory and Finance Committee, the Post Office Board, the Telecommunications Board and the Electricity Board.

That joint report commented:

“To varying degrees, each of the Boards is facing major changes in the technological and commercial environments in which they operate and, in some cases, increased competition in their markets from both on and off the Island. As States committees, the Boards are subject to constraints at an operational level on their activities and sometimes this makes it difficult for them to react quickly to changing circumstances and to pursue the opportunities for improved performance which they believe exist within the environment in which they operate but which may not be a feature of non-trading committees’ activities. The manpower arrangements in terms of limits on numbers and centrally negotiated pay and conditions which do not always provide for the flexibility in the use of staff required in a commercial environment is a significant constraint but it is not by any means the only one. If the services currently provided by the Boards can be delivered in a more efficient and effective manner it would bring benefits to the community as a whole including the States and consumers.”

The report continued:

“Currently each Trading Board is a committee of the States, and has delegated to it, or implicitly fulfils the roles of owners/shareholders, regulators and management board and, as a form of check on their activities, they are subject to the low-level operational constraints referred to earlier. In these circumstances, confusion and conflicts inevitably arise as to the balance which needs to be given to each role when considering a particular issue.

It is proposed that these three roles:

- *owners/shareholders*
- *regulators*
- *Management Board*

are separated and that political responsibility for the strategic-level constraints of a regulatory framework and the exercise of owners/shareholders’ roles be delegated to two separate States committees ...”

After consideration of the policy letter the States resolved to approve the application of the clauses shown below to each of the Boards:

- “i) to agree in principle that arrangements for the provision of [electricity, postal and telecommunications] services shall be revised along the lines described in that Report;*
- ii) to agree in principle that detailed proposals for the implementation of such revisions shall be based on [electricity, postal and telecommunications] services being delivered by States Trading Companies having the status of body corporate wholly owned by the States;*

iii) to direct the Advisory and Finance Committee, [the Electricity Board, Post Office and Telecommunications Boards] to liaise with the appropriate committees of the States, in particular the Board of Industry and the Civil Service Board, on the preparation and presentation to the States of detailed proposals for the implementation of the revised arrangements including appropriate transition measures."

Since June 1998, considerable work has been done on bringing forward proposals to implement the 'in-principle' decision. In particular, broad agreement has been reached by the parties involved on detailed proposals from the Board of Industry for a regulatory structure. This regulatory structure aims to protect the interest of consumers and to promote fair competition in non-core services.

General agreement has also been reached on proposals from the Civil Service Board setting out the principles for the protection of the rights of employees transferred from the Trading boards to States Trading Companies.

As of December 1999, full agreement with all the parties involved had not been reached on the precise status and structure of States Trading Companies.

The proposals from the Board of Industry for a regulatory regime brought forward in a separate policy letter will result in legislation which, very simply and quickly, can be extended to cover the provision of any other services which are transferred from the States.

The proposals from the Civil Service Board on the protection of employees' rights brought forward in a separate policy letter will result in legislation which can be extended to cover staff affected by any other transfer of functions. Full agreement has not yet been reached with the Civil Service Board on how the principles of this legislation should be implemented in respect of the transfer of functions from the Post Office Board and Electricity Board.

Whilst it had been the intention of the Advisory and Finance Committee to bring forward to the January 2000 States meeting proposals for the commercialisation of the Post Office Board and the Electricity Board, this has not proved possible. The Advisory and Finance Committee is, however, committed to bringing forward those proposals as soon as is practicable.

1.2 IT IN SOCIETY.

In March 1999, recognising the fundamental impact that global growth in ecommerce could have on all sectors of the local economy, the Advisory and Finance Committee established the Working Group on IT in Society to provide strategic guidance on the development of the social, legal, economic and technical framework needed to ensure that Guernsey establishes a pre-eminent position in this rapidly developing marketplace.

The Working Group published its provisional Policy Statement in the 1999 Policy and Resource Planning Report (Billet d'État XIII, 1999, Appendix VI). Since then, significant progress has been made on many aspects of its policy. This is described in further detail below.

1.2.1 Social

The social policy stated:

“Training organisations in general and the Education Council in particular, should endeavour to promote access to and develop skills in, information and communications technology for all members of the community who would benefit thereby”

The Working Group has been fostering the relationship between the Telecommunications Board and the Education Council in the development of the Guernsey Grid for Learning. The States has approved capital investment of some £5m and on going revenue expenditure on this exciting project. The Working Group has also initiated a review of the IT skills shortage across the community as a whole that will be conducted by the Training Agency and the College of Further Education.

The States of Guernsey has developed an Internet web site that is designed to provide information on all aspects of the work of States committees.

The Working Group has been considering various means whereby universal access to the Internet may be promoted.

1.2.2 Legal

The legislative policy stated:

“The Advisory and Finance Committee should, as a matter of urgency promote the revision of local legislation ...” to encourage the development of ecommerce.

The Working Group recommended the appointment of Bird & Bird as advisors on ecommerce legislation to create the right environment for Guernsey to become an attractive location for electronic business activities. Both the Advisory and Finance Committee and the Law Officers approved this recommendation.

The Advisory and Finance Committee will be presenting proposals for legislation based on the recommendations of Bird & Bird following a consultation process with interested parties which is already on its way.

The Bird and Bird report covers the following legislative issues:

- **Rules of evidence** - this is concerned with modernising the rules of documentary evidence to cover the admissibility of electronic copies in Court proceedings

- **Requirements of form** - this involves updating the legal definition of 'writing' to include information in electronic form
- **Facilitation of electronic communication** - this term covers the general facilitation of ecommerce.
- **Electronic agents** - an example of an electronic agent would be a software programme which is instructed by a user to search the Internet for the lowest price for a product, and then make the purchase without further reference to the user. Legislation needs to be updated to clarify the legal status of transactions made by such agents.
- **Electronic signatures** - there is a need to establish in law that an electronic signature is equivalent to a hand-written signature.
- **Liability of intermediaries** - electronic transactions involve not only the supplier and the consumer, but also the companies who provide a variety of services which facilitate such transactions. Bailiwick legislation needs to be clear concerning their liability.
- **Encryption** - it is important that there should be no restriction on the application of encryption technology to support secure ecommerce.
- **Consumer Protection** - consumer protection law must be updated to take account of the relevant OECD recommendations and the European Commission Distance Selling Directive.

Two areas of legislation were excluded from the Bird and Bird terms of reference on the basis that work was already being undertaken in these areas.

The Data Protection Commissioner (designate) is well advanced with preparing proposals for the revision of local data protection legislation that will be compatible with Article 25 (transborder data flows) of the European Directive. (94/46/EC)

In May 1999 the Working Party set up by the Advisory and Finance Committee to consider the whole issue of intellectual property rights met officials from the U.K. Patent Office.

Following that meeting the Working Party referred the legal aspects of various options to the Crown Officers. In the interim it is intended that the existing legislation will be amended to allow for the re-registration in Guernsey of Community Trademarks. The opportunity will also be taken to remove the requirement that documents issued by the London Registry be sealed as it is no longer the practice to seal such documents.

1.2.3 Economic

The economic policy stated:

“The Board of Industry should consider various incentives to encourage local industry to exploit the opportunities ... of ecommerce and should endeavour to promote Guernsey internationally...”

The Advisory and Finance Committee has asked the Board to produce a ‘Business Plan’ for the promotion of ecommerce internationally and locally. The Board will have to identify the additional resources required for implementation. The Board of Industry has already appointed an ecommerce ‘envoy’ to lead this marketing effort.

It is anticipated that any additional financial resources required by the Board will not exceed the sum which the Advisory and Finance Committee is empowered to sanction under States financial procedures.

An ecommerce forum of local businesses has been created to facilitate the sharing of information. The Working Group is also participating in the work of the US-based International Ecommerce Association (www.inteca.org) and has been studying specific ways for Guernsey to make a positive contribution to international electronic business.

The Working Group will consider how the States may lead by example in developing its Internet site and adopting electronic government solutions throughout its administration.

1.2.4 Technical

The technical policy stated:

“The Telecommunications Board should continue to ensure that adequate investment is made in the provision of a technological infrastructure and that Internet access is available at an economic and internationally competitive rate to domestic and business customers alike.”

The Working Group recognised that the implementation of a comprehensive ecommerce strategy for the Bailiwick will place unprecedented demands on the existing telecoms infrastructure and reinforce the pressure for it to remain at the forefront of technology.

This issue is fully covered in the following sections of this policy letter.

1.2.5 The future of the IT in Society Working Group

In the nine months in which it has been established, the Working Group has performed a valuable role in preparing the ground for a co-ordinated approach to the development of IT in Society and support for the growth of ecommerce.

To date the Group has carried out this role on an ad hoc basis but it is clear from the following sections of this policy letter that it will need to be restructured, refocused and provided with adequate resources. This will be necessary to enable it to help drive the IT in Society and ecommerce initiatives forward at the pace required and this is indicative of how fast things are moving on this subject. Section 3.7 of this policy letter puts forward proposals for the future of the Group.

2. ECOMMERCE AND ITS IMPACT ON THE BAILIWICK

In July 1999, the Telecommunications Board commissioned Analysys (see Appendix I and www.analysys.com), a telecoms consultancy company with an international reputation, to advise it on *“long-term business models for Guernsey Telecoms”*, which naturally led to consideration of *“the fast and flexible development of telecoms ... to meet the Bailiwick’s business, social and environmental needs”*. The Analysys report revealed that ecommerce and the Internet will have an immense impact on the future of the Bailiwick.

This Analysys report has been lodged at the Greffe and has been subject to an extensive presentation and consultation exercise. The next sections of this report draw heavily on the Analysys report.

2.1 ECOMMERCE

Ecommerce is the generic term for the process of ‘doing business’ remotely by computer. This definition covers business-to-customer, business-to-business and intra-business transactions. These transactions might involve marketing, selling, signing contracts or sharing information. The following examples show the different ways in which ecommerce is being used to make business processes more efficient:

- Amazon.com is one of the most famous business-to-customer ecommerce businesses. It uses the Internet as a means of selling books, CDs, computer games and gifts to a global audience. It is now the largest bookshop in the world in terms of revenue, despite having no retail premises, no direct sales force and very little marketing outside the Web.
- Harley Davidson has implemented an extranet, which is a business-to-business system. This gives its dealers direct access to corporate systems, which has increased the speed of administration processes for authorising work under guarantee by a factor of ten (www.cio.com then search for “harley”). It has also given the dealers online access to service manuals and diagrams.
- Prudential Insurance has deployed an intra-business system. Its intranet allows 78 000 employees worldwide simultaneous access to the latest corporate information (www.ibm.com the search for “prudential”).

The universal access provided by the Internet and the accelerating ubiquity of the Internet Protocol (IP) has created a natural platform for ecommerce. The widespread use of IP-based systems has dramatically lowered the costs of implementation and operation, opening a global market, which means that even very small companies can benefit from ecommerce. The cost to companies of setting up the systems and software necessary to exploit ecommerce has fallen dramatically within a few years.

The competitive advantages of ecommerce are so overwhelming that rapid adoption of this technology will be essential for survival in most business sectors. The financial services sector is amongst the first to experience this revolution. The businesses that survive will change beyond recognition, as customers discover their power to purchase anywhere in the global market, demanding new standards of responsiveness and value. The successful businesses will participate in a market which is destined to grow extremely rapidly. According to an article in the *Financial Times* (6 July 1999) the UK ecommerce market is forecast to grow from approximately £250 million in 1999 to approximately £2.2 billion in 2004.

Ecommerce in the broadest sense includes many applications which are of considerable importance not only for business competitiveness, but also for social development. Some examples are presented below:

- Teleworking means working at home by using a computer which is linked to an employer's system. It removes the need for employees to travel to work, particularly during the rush hour, and, therefore, increases productivity and reduces traffic congestion. It also has the potential to bring mothers and the retired back into employment, allow those with physical handicaps to become gainfully employed more easily and revitalise isolated regions.
- Telelearning enables individuals to use the Internet or corporate intranets to gain access to high-quality interactive education at home or in the office. It allows employees to develop their skills without sacrificing significant amounts of free time to attending traditional classes at a college. This support for life-long learning will be crucial for both businesses and their employees.
- Telegovernment is the application of ecommerce and Internet technologies to disseminate government information and to increase the efficiency of administrative processes.
- Telemedicine is an application by which state-of-the-art medical advice can be brought to small hospitals.

2.2 IMPACT ON THE BAILIWICK

There is little doubt that ecommerce is going to have an immense impact on every economy in the world. There are few places in the world where the effects of networking technologies and ecommerce will be felt more strongly than in the Bailiwick of Guernsey, because:

- there is limited scope for tourism, manufacturing, horticulture, agriculture or fisheries to drive economic growth, given the physical constraints of the Bailiwick, and so all of the significant growth is likely to be in knowledge-based sectors

- the Bailiwick is extremely dependent on the financial services sector, which, as a knowledge-based industry, will be the first to feel the effects of ecommerce
- ecommerce will dominate the professional, business and personal services sector, which is the only area of the market that is growing and can offer scope for diversifying the economy
- demographic trends indicate that the working population in the Bailiwick is likely to decline slightly, and so it is essential to increase productivity and widen the scope for employment through the use of ecommerce
- physical isolation and relatively limited Island transport links to Europe increase the importance of ecommerce for transacting with partners, overseas offices and customers.

If the Bailiwick fails to create an attractive environment for ecommerce, then businesses will migrate to locations where the telecoms infrastructure, ecommerce legislation and IT skills meet their requirements.

Mike Nelson, Programme Director for Internet Technology at IBM, supports this view in his statement from earlier this year: *"Multinational corporations increasingly are choosing where to invest based on whether there is good telecommunication infrastructure."* So does Tony Blair, who recently stated: *"Countries that wholeheartedly embrace ecommerce will benefit from improved national economic performance. Those that do not risk seeing trade ebb away to low-cost competitors elsewhere in the world."*

If the environment does not allow ecommerce to flourish, the businesses that stay in the Bailiwick will struggle to compete against companies elsewhere that are using ecommerce to the full. A vicious circle of falling revenues, skills migration and loss of confidence will lead to economic decline within the Bailiwick. As property prices start to tumble, the affluent will absorb their losses and leave, but the rest of the residents will be trapped in negative equity. Recovery from this situation will be impossible, because the Bailiwick will lack the right skills, infrastructure or global profile. The race will have been lost.

The Bailiwick cannot afford to delay, as several competing economies are ahead in terms of ecommerce. Ireland and Singapore, two islands with significant offshore businesses, have both already passed legislation to handle ecommerce transactions. Bermuda, Jersey and the Isle of Man are also making good progress in the race to pursue the USA's lead. The following quotation comes from the Financial Times dated 11 November 1999:

"Laws to aid electronic commerce are being hurried through by legislatures in Jersey and the Isle of Man amid predictions of a rapid increase in offshore Internet companies. Both states are vying to attract Internet investors to their low-tax regimes and are expected to bring in separate legislation by early next year...Both governments have invested in telecommunications infrastructures ..."

However, if the Bailiwick moves quickly, it can use ecommerce to underpin its sustainable development, creating opportunities to diversify the economy and improve productivity, breaking free of the tight constraints on its available workforce and business premises. Residents will use high-speed access to online resources to maintain and develop their skills and knowledge. The economy can enter a virtuous circle of increasing business innovation, revenue growth and skills acquisition, as it builds a worldwide reputation for ecommerce.

2.3 ECOMMERCE STRATEGY

The Advisory and Finance Committee, and the vast majority of those involved in the consultation process, recognise that there have been unprecedented radical changes in the telecoms, IT and media industries over the past five years, and that the pace of change is going to accelerate. Ecommerce and the Internet are fundamental to these changes, and will have a strong impact on the efficiency of every sphere of commercial, governmental, educational and social activity. The Committee is convinced that the Bailiwick must embrace ecommerce. There is an imperative for very swift action given the speed of developments in ecommerce and the speed with which other offshore economies are moving.

The Advisory and Finance Committee recognises that the process to develop and implement a strategy to enable ecommerce to flourish in Guernsey has been started by the formation of the IT in Society Working Group. The process now needs to be given added impetus. .

The Committee anticipates that the strategy will comprise of three elements:

- **Credibility** – extensive practical applications of ecommerce in local business, government and education are needed to show that aspirations of the States are translated into action.
- **Legislation** – Bird & Bird's initial recommendations for ecommerce legislation will be actioned but legislation will need continual development to achieve and maintain an advantage over competing jurisdictions.
- **Telecoms** – the Committee recognises that securing world-class telecoms services is essential, and will require changes to the States' involvement in telecoms which go much further than was envisaged under the commercialisation process. However, the work already undertaken on regulation and the protection of employees' rights remains applicable (the development of the telecoms sector is addressed in Section 3).

The Advisory and Finance Committee understands that it must co-ordinate these three elements of the ecommerce and Internet strategy across the relevant Boards. It also recognises that it is not enough to develop and execute the strategy. The strategy itself, and details of the progress made with regard to its implementation, must be

publicised to the residents, local businesses and international businesses. The aim of such marketing is to secure a unique and attractive position in the new global economic order that is being created by ecommerce.

The Advisory and Finance Committee continues to believe that the commercialisation process agreed in-principle in June 1998 remains the best means of securing the delivery of postal and electricity services. However, this policy letter has demonstrated the pivotal role that telecoms has to play in the future development of ecommerce.

The next section highlights the need for radical reform in the way local telcoms services are provided to ensure that the Bailiwick secures world-class telecoms services.

3. ENSURING THE AVAILABILITY OF WORLD-CLASS TELECOMS

The previous section of this report established the imperative to create a good environment for ecommerce to ensure sustainable social and economic development. An essential element of this ecommerce environment will be the availability of world-class telecoms services. This section addresses this need and is structured as follows:

- the global telecoms revolution
- Guernsey Telecoms today and the pressures ahead
- regulation and development of a competitive market
- critical success factors
- exploring the options
- developing the recommended option
- managing the transition
- recommendations.

3.1 THE GLOBAL TELECOMS REVOLUTION

This description of the revolution in global telecoms draws heavily on the independent report produced by Analysys in November 1999. This summary is structured to show the implications of forces that shape the global telecoms market on the future of Guernsey Telecoms.

3.1.1 Forces Acting on the Telecoms World

Liberalisation and competition

Before liberalisation, every country in Europe generally had one large nationalised operator – the incumbent operator. Liberalisation has allowed these incumbents to enter each other's markets. Indeed, the threat of competition in the home market has driven incumbents to seek expansion abroad – BT, for example, has investments in most western European economies, including France (Cegetel), Germany (VIAG Interkom), the Netherlands (Telfort) and Spain (BT Telecomunicaciones). Other types of new entrant include utilities expanding into telecoms provision, start-up companies using new technologies, and non-facilities-based operators.

All of these operators are consolidating as they attempt to form larger companies capable of competing on a global scale. The successful merger of MCI with WorldCom has shaken the market and, in response, BT has formed an alliance with AT&T. Deutsche Telekom lost out to Olivetti in its attempts to merge with Telecom Italia and is now seeking ways to carve out a global presence for itself. Such alliances are formed with the intention of offering end-to-end products with a guaranteed quality of service to large multinationals. In this consolidating global market, small incumbent operators that are entirely focused on their domestic market will not be able to offer a full range of services at a competitive price.

Technological advances

A whole variety of technological advances have occurred, particularly in terms of fibre-optic transmission, the Internet and Internet Protocol (IP), high-speed access and mobile telephony.

- The rapid improvement in fibre-optic technologies means that the capacity per fibre and cost effectiveness of transmission has increased dramatically. For example, transatlantic cable capacity has increased by a factor of 1000 in just ten years, and this trend will continue with the introduction of new technologies.
- The Internet is possibly the most significant development in communications since the original deployment of telephone networks in the second half of the last century. For the first time, a common platform for sharing data is accessible everywhere in the world. Underlying the Internet is the Internet Protocol (IP), which enables the sharing of text, pictures, sound and video over a decentralised network. IP is an internationally managed open standard, which has prompted the development of an extraordinary range of software tools and applications in a short time. The most famous of these applications is the World Wide Web.
- Until now, Internet services have been accessed mainly via dial-up on the traditional Public Switched Telephone Network (PSTN). However, dial-up services are already at least ten times too slow to support the interactive multimedia applications that will be run over the Internet in the near future. Hence, telecoms operators are introducing asymmetric digital subscriber line (ADSL) technologies to deliver this level of performance to customers along the existing copper lines. The cable operators are developing cable modems, so that they can offer Internet access in addition to their existing television and telephony services. Advanced fixed wireless technology presents another alternative. In addition, future high-speed satellite systems will be used wherever the terrestrial network is unavailable, unreliable or over priced.
- Technological developments and competitive markets have led to a boom in the mobile telephone industry as mobile phones have become mass-market products. Until now, mobile services have been largely confined to voice, because the rates at which data can be transferred using existing GSM technologies are very slow. However, the new mobile standard, universal mobile telecommunications system (UMTS), is expected to offer much higher speeds. This will enable the mobile phone to be used for high-value applications like accessing email, the Internet and company systems while on the move. UMTS will be introduced into Europe within the next few years and even earlier in the UK, with licences expected to be auctioned in 2001.

Many of these developments have come to fruition over the last five years and the pace of change continues to accelerate. It is a significant challenge for all telecoms operators to manage the introduction of so many different and radically new technologies. Even the largest operators struggle to keep abreast of the latest developments, for the smallest operators it will be virtually impossible.

3.1.2 Effect on the telecoms sector

The two forces of increased competition and new technology have caused three main effects:

- Increased competition and very high-capacity transmission technologies have resulted in declining prices paid by the customer. The most substantial reductions have occurred in areas where profits margins were traditionally high, such as international call tariffs. These have more than halved in the last ten years and will continue to fall. There is also a steady reduction in the price differences between local, national long-distance and international calls – ‘the death of distance’.
- The rise of the Internet and IP-based applications for business and entertainment, combined with falling prices, will continue to drive rapid growth in data volumes on telecoms networks. Global data traffic is expected to approach global voice traffic volumes soon. Countries in the vanguard, such as the USA, have already passed this point, with data traffic still growing exponentially. Not only do people want to send and receive more data, but they also want to do so more quickly. Hence, there will be increasing demand for high-speed telecoms services.
- Improvements in the performance and costs of mobile telephony will drive its increasing substitution for fixed telephony. Even now, many users choose to make a call using their mobile, because the mobile phone is closest to hand and contact numbers are saved in its memory. In addition, there will be dramatic improvements in the data capability of mobile services with the next generation of systems.

These three effects have combined to drive the convergence of three powerful industries: telecoms, IT and media. This brings enormous challenges to telecoms operators which are being stretched into entirely new markets, technologies, supplier and partner relationships.

3.2 GUERNSEY TELECOMS TODAY AND THE PRESSURES AHEAD

For over 100 years, Guernsey Telecoms has provided telecoms services on a par with those available elsewhere in Europe. It has successfully kept pace with global developments, while ensuring that the unique needs of its business and residential customers are taken into consideration. In particular, it has provided a high-quality resilient network, which has underpinned the development of the international finance sector.

The review of the global telecoms revolution shows that the changes in telecoms over the past 100 years have been exceeded by the changes in the last five years, and that the rate of change continues to accelerate. The growth in the range and complexity of technologies and services is unprecedented. In addition, convergence is driving telecoms operators into the unfamiliar worlds of IT and interactive media.

Successful incumbent operators now need hundreds of specialists to offer the full range of services. They need billions of dollars of buying power to secure equipment and international capacity at the right price. They need extensive R&D resources to understand the latest developments and sustain a competitive business.

While Guernsey Telecoms deserves congratulation on the way it has coped in the past, it is unrealistic to assume that it can cope with the dramatic challenges presented by the global telecoms revolution. For instance, Guernsey Telecoms will have to upgrade the network infrastructure to accommodate exponential growth in data traffic. Customers will expect the provision of high-speed services which will require a range of new access technology. They will also demand end-to-end international services which are as reliable and cheap as those in any other international business district. The mobile network will need upgrading to offer high-speed data services. In addition to the development of the network infrastructure, its international connectivity and the provision of basic services, there is a plethora of entirely new services emerging. For example, customers are expecting their telecoms companies to offer video-on-demand services over the network and to manage applications on their personal computers remotely.

Guernsey Telecoms' annual revenue is approximately £30m and it has less than 300 staff. However, it is expected to offer the same services at the same prices as operators which are generally 100 to 1000 times larger. Further consolidation among international operators will heighten the contrast with Guernsey Telecoms over the next few years. Guernsey Telecoms is not only handicapped in this comparison by its size. Its ownership by the States restricts its commercial freedom, particularly in the critical area of recruiting and rewarding staff.

Guernsey Telecoms is fundamentally too small and too constrained. Problems with meeting customer demands are becoming apparent today and these problems will increase with time unless the telecoms sector is reformed. This reform must engage the buying power and expertise of the massively consolidated international operators.

Independent regulation and the management of competition in Guernsey are paramount, given the incumbent's current position as both regulator and monopoly operator, which is clearly unsustainable.

3.3 REGULATION AND THE DEVELOPMENT OF A COMPETITIVE MARKET

Independent regulation and States guidance

If the telecoms market is to grow and develop in a way that meets the needs of residents and businesses, then there must be independent regulation. This has been proven in many markets around the world, where regulators have had the power to penalise operators with heavy fines for poor performance and even been able to revoke a company's licence to operate. While the regulator must be independent, it must also be accountable to the States and the residents. This is managed by the what is referred to in the UK as ministerial guidance which establishes the objectives and terms of reference for the regulator. The regulator then performs its duty within this definition.

Locally, States guidance to the regulator must certainly ensure that the dominant operator has a universal service obligation. This means that the main telecoms operator must provide basic telecoms services to whoever requests those services. Residents in remote locations, or with low incomes, are thereby assured of access to modern telecoms services. States guidance will also demand that the regulator verifies that the dominant operator is maintaining network resilience, investing sufficiently in network upgrades and achieving high performance standards.

Price control measures are also an important part of the States guidance. Price-setting formulae, based on international benchmarks, should be defined to keep prices comparable with those offered in other countries, whilst ensuring that the prices for local services remain acceptable. The regulator should investigate cross-subsidies between telecoms services and determine the degree to which prices should reflect the underlying costs.

By following the approach described above, the States steers the strategic development of the telecoms market, but is not involved in the day-to-day decision making. The independent regulator operates at the executive level within the terms of the States Guidance. This creates a stable and transparent regulatory regime, which is essential if major telecoms operators are to make a long-term commitment to the Bailiwick.

Finally, one of the regulator's main tasks will be to encourage and manage competition among telecoms operators and this is expanded upon below.

Encouraging competition

Regulated competition in telecoms can ensure that customers have a wider choice of more innovative services, and that customer care is improved and prices lowered. By

introducing competition to the marketplace, the regulator can ensure that the dominant operator does not become complacent, and that niche markets are served with specialised products.

In broad terms within the telecoms sector, there are two types of operator which can compete in the market - the network operator and service providers:

- The network operator is responsible for and operates the network infrastructure: exchanges, switches, routers, optical fibres, copper wire, etc. Its addressable market is defined by the physical extent of the network. It offers retail telecoms services to end customers and wholesale services to service providers.
- Service providers pay wholesale prices to use the network operator's infrastructure to deliver their services to customers.

A network operator under this definition would be akin to BT (British Telecommunications plc) in the UK market. Examples of potential service providers include companies involved in the following:

- the remote provision of personal computer applications for small businesses
- Web hosting for business start-ups
- the provision of domestic services and extremely low-cost international calls using voice over IP technology
- advanced application provision for major companies.

Competition among network operators could cause great difficulty in the Bailiwick, because the introduction of new network infrastructure might result in more roadworks and risk visual intrusion such as through a plethora of radio aerials. In addition, any new network operators would target the major customers in central St Peter Port, taking substantial revenue from the dominant network operator, which would still have to comply with the universal service obligation. This type of cherry picking of high-value customers could be very damaging for long-term investment in infrastructure. Accordingly, given the size of the telecoms market and the constraints of current technology, there should be just one network operator in the Bailiwick in the first instance.

The regulator should stimulate competition in services by forcing the network operator to open its network to service providers. These service providers would make wholesale payments to the network operator for the use of the basic network. These service providers do not threaten the environment and support investment in the network infrastructure through the wholesale payments to the network operator.

In conclusion, given the size and diversity of the market there is currently room for only one network operator, which is responsible for the infrastructure, but there is ample opportunity for the regulator to develop competition with telecoms service providers.

3.4 CRITICAL SUCCESS FACTORS

Given the arguments above, there are five critical success factors for assessing different options for the future development of the telecoms market:

- the buying power and expertise of major telecoms operators must be engaged if there is to be a modern network infrastructure offering world-class telecoms services
- the major telecoms operators must be offered a long-term position in the market, which is free from the potential for political interference, if they are to make a full commitment to serving the Bailiwick
- there must be one network operator to avoid the risks of unnecessary disruption and cherry-picking in a small market
- there should be competition in telecoms services, to avoid the network operator becoming complacent
- strong independent and accountable regulation of telecoms is essential because both operators and customers will be wary of anything less, this is assumed to be given for all of the options considered in the next section.

3.5 EXPLORING THE OPTIONS

3.5.1 Commercialisation at the current pace

The commercialisation process has the great advantage that it is well understood, widely accepted, and it has been in progress for many years. There is no doubt that it would improve the position of Guernsey Telecoms by creating more flexibility for making commercial decisions, including those concerned with staffing. It has previously been viewed as the end point for the development of the postal, electricity and telecoms sectors.

Whilst this continues to be the case for postal and electricity services, it is now clear that this option is not a viable end point for the development of the telecoms market, because it does not engage the buying power and expertise of major telecoms operators. The scale of the telecoms operations in the Bailiwick remains limited by the size of the Bailiwick's market under this option. Therefore, Guernsey Telecoms could not employ all of the hundreds of experts that a modern incumbent operator requires to offer a full range of services. Guernsey Telecoms would not have the buying power to negotiate competitive contracts for equipment and international capacity. Guernsey Telecoms would have to outsource many operations.

Subcontracting for such a very small operator will always be expensive. Even if all of the various subcontracts were bundled into one package, the subcontract would still seem relatively small to equipment suppliers, service providers and major telecoms operators. The package could be made more attractive by stepping beyond subcontracting to offer a longer-term partnering arrangement. However, even at this extreme, the partner would not be inclined to make a strong commitment to the Bailiwick and would expect a high margin in compensation, because of:

- the size of the opportunity being relatively small
- concerns about the management interface with Guernsey Telecoms
- concerns about political intervention as Guernsey Telecoms would still be owned by the States
- concerns about the risks of weakening its brand by co-branding with Guernsey Telecoms without full control of marketing and management
- there being no opportunity to gain full ownership of customers.

Guernsey Telecoms would have to negotiate the partnering agreement with a partner that would be 100 to 1000 times larger. It is unlikely that an equal partnership would result. If the partner did not exact a high price for entering into the agreement, then they would only sign if they gained very strong control, which is no longer a partnership.

In conclusion, this option would have offered a useful staging post, if it had been completed earlier. However, it is now too little and, even if accelerated, too late to offer any benefits.

3.5.2 Merger or partnership with Jersey Telecom

It is entirely logical to propose a merger or partnership with Jersey Telecom. The two operators share a similar heritage, have an extremely similar customer base, already have some infrastructure agreements in place, and are working in partnership in some areas.

However, Jersey Telecom is not much larger than Guernsey Telecoms in context of the consolidating European telecoms marketplace and so working together would not offer the 100- to 1000-fold increase in scale that is required for the long-term. It suffers from the same fundamental problems as commercialisation. The major operators are not engaged and the monopoly is maintained.

Although working the Jersey Telecom is not a solution in itself, it has the potential to offer useful synergies if introduced to another more promising option. However, there is a danger in delaying the necessary major reforms of the telecoms market, while trying to reach complex agreements with Jersey Telecom for some marginal benefits. Therefore, the States should move forward rapidly with its preferred solution, while keeping the door open should Jersey Telecom wish to collaborate at a later date. Ideally, the dominant operator in any future arrangement would have the freedom to make commercial decisions about whether to work with Jersey Telecom.

3.5.3 Privatisation

Privatisation is a very well-established process that would give Guernsey Telecoms all of the freedom that it requires to make commercial decisions. It also has the advantage of raising significant revenue for the States, perhaps with benefits for the residents of the Bailiwick in terms of share offers.

Unfortunately, the privatised Guernsey Telecoms would not gain the economies of scale which are so necessary for developing world-class telecoms services. Its size would still be determined by the size of the telecoms market in the Bailiwick, unless, of course, a major telecoms operator gained ownership. A take-over of this kind may bring economies of scale, but no one would have control over selecting the new owner. Without a competitive market, it would be risky to create a situation where the monopoly could pass into any operator's hands. The only way for the States and, therefore, the residents to maintain some control would be for the States to retain a majority stake, but then the privatised operator loses its freedom to make commercial decisions.

Privatisation is not the preferred option, because it does not allow the controlled introduction of major telecoms operators to the market. It is an irrevocable decision which carries risk by perpetuating a small local monopoly.

3.5.4 Major telecoms operator runs Guernsey Telecoms

A major telecoms operator could take over Guernsey Telecoms, bringing significant expertise and buying power to the Bailiwick. There is little doubt that a number of operators would be interested in such an opportunity, and would have the ability to deliver a world-class service. This approach has been proven to be successful in the Isle of Man where BT now run the telecoms network.

This option not only introduces a major operator to the market, but also addresses the critical success factor concerned with winning the major operator's commitment. This is achieved because the operator is presented with a long-term position in the market. If a reputable international operator is selected, then this option should offer low risk and stability.

The disadvantage with this approach is that it does not in itself create a competitive market. The major telecoms operator may deliver adequate services, but will not be stimulated by competition to innovate, push prices down and offer outstanding customer care. Depending on how the arrangement is formulated, it may be difficult for the regulator to introduce new competition or oust a poorly performing operator. The next option shows how the advantages of introducing a major telecoms operator to run Guernsey Telecoms can be adapted to answer these concerns through licensing.

3.5.5 Controlled licensing of new operators

This option is a development of the one above, but instead of bringing in a major operator to run Guernsey Telecoms, major operators bid competitively for a single licence to operate the network. The winner replaces Guernsey Telecoms as the network operator and custodian of the infrastructure. Additional licences are awarded to local companies and other operators, allowing them to be service providers that pay wholesale prices to use the network to offer competing telecoms services.

The first critical success factor is satisfied by engaging a major telecoms operator to run the network. The second is achieved, because the licence to be the sole network operator engenders the licensee's commitment. The third critical success factor is answered by there being only one licence for the network operator. The fourth factor is concerned with the development of competition and this option creates competition through service providers.

The final critical success factor demands strong regulation and under this option the regulator has more control than in any other. The regulator is given the ultimate sanction – the ability to revoke a licence and reclaim the assets. However, the regulator must not be too focused on reducing risk. Taking heavy fees for the licence in advance, closing all loopholes with complex rules, and preparing mechanisms for imposing very high fines need to be balanced with the need to create an attractive environment for major telecoms operators to enter.

It is important to stress that this option is significantly different from the privatisation option. Controlled licensing brings major telecoms operators into the market with important economies of scale. This mechanism gives the regulator more control over the market and allows the development of competition. Licensing also ensures that infrastructure assets can be recovered by the States under exceptional circumstances.

This is the recommended option and it is developed in more detail in the following section.

3.6 DEVELOPING CONTROLLED LICENSING OF NEW OPERATORS

3.6.1 One licence for the infrastructure operator

The regulatory process requires the design and implementation a transparent process for awarding the single network licence. Such processes are commonplace in the telecoms sector. The invitation to tender will specify the obligations of the licensee, the regulatory environment, and the selection criteria. The selection process must be tailored to meet the specific needs of the Bailiwick, but is likely to involve a scoring process which balances considerations of:

- compliance with the specification in the invitation to tender including the universal service obligation, network resilience, and service standards
- compliance with the regulator's international benchmarking methodology for setting price ceilings
- setting local call charges and line rentals
- proposed schedules for introducing new technologies and new services
- planned levels of investment in the network infrastructure
- plans for developing international connectivity
- proposed resource commitments
- plans for the retention, recruitment and training of local staff
- proposed investments in local education and social projects
- skills and experience
- access for service providers to the network on a "level playing field" basis.

The winner may be a major telecoms operator or a consortium of partners including a major telecoms operator. A consortium may offer the best solution given the wide range of skills and experience required. It is expected that the winner would establish a locally registered company.

A well-managed licensing process with a strong marketing campaign will attract the interest of major telecoms operators. They will see an opportunity to expand the footprint of their network to encompass a significant offshore financial centre with a relatively affluent population. It will give them the chance to offer end-to-end services to a large number of significant multinational clients. This increases their chances of winning extremely valuable global contracts to link all the offices of major multinationals.

If the Bailiwick has implemented a successful ecommerce strategy, then the opportunity will be even more attractive to major telecoms operators. They will be lured by the prospect of serving an innovative client base in a market with an international profile. The small size of the market combined with its pleasant environment, the English language and a thriving business sector would make an excellent showcase for a major operator's latest products and services.

It is anticipated that the winner would have to pay an initial fee for the licence. One method of setting this fee is to award the licence to the highest bidder. However, this could have the negative consequence of diverting valuable capital away from investment in telecoms. Alternatively, the initial fee may be a fixed amount. This has the advantage that the proposals would be evaluated solely on the merits of their commitments to investment and service delivery.

There is a principle that the States should not seek to maximise their income from the telecoms sector, but should seek to encourage investment and commitment by the telecoms operators for the overall benefit of the Bailiwick.

Guernsey Telecoms assets will be passed on to the new licensee for the duration of the licence. The terms of the licence will compel the new operator to take on all of the staff under the legislation being proposed by the Civil Service Board. This will be made clear in the invitation to tender.

The licensee will also take control of the buildings, infrastructure and equipment. These will have been defined and valued in the invitation to tender. The initial fee for the licence and any annual fees will take account of this valuation. The licensee must maintain and develop this infrastructure in accordance with the terms of the licence and the investment levels presented in the proposal.

The fear of the network operator abandoning their investments and pulling out is not well founded. Because the licensing process is entirely transparent, the winning operator will have the information, skills and experience to determine that there is a viable business case. Once this is established it would make no sense for the winning operator to pay the initial licence fee and make substantial network investments, only to pull out. Commercial sense rules that a network operator makes the decision to invest and runs with it for at least the duration of the licence. In addition, walking out or significantly underperforming would irreparably damage the operator's reputation in front of major business customers. It may even prevent the operator from winning licences to operate in other countries.

The licence is likely to have a limited duration, but renewed on an annual basis if the regulator is satisfied with the licensee's performance. This gives the regulator more control and avoids the licensee becoming wary of making investments at the end of the term. In the unlikely event that the licence is not renewed at the end of its term or possibly revoked under extreme circumstances, then the infrastructure would be valued according to a defined process and bought back by the States ready for the next licensee. This mechanism ensures that the licensee continually invests in the network.

The regulator will review the performance of the licensee in accordance with the performance standards defined in the licence and the schedules presented in the proposal. In particular, the licensee will have to comply with a universal service obligation to ensure that all residents and businesses have timely access to reliable telecoms services at a reasonable price.

The licensee is committed to the investment schedule presented in its original proposal and defined in the terms of the licence. However, it is almost impossible to predict equipment purchases and service launches that will be necessary given the speed of technological change. The regulator will manage the situation by monitoring the overall level of investment, and by international benchmarking of network and service developments. The regulator will work with the network operator to ensure that investment is directed to maintain a world class telecoms environment.

The regulator will have the power to fine the operator under the terms of the licence if the licensee fails to perform. The regulator can revoke the licence in the unlikely circumstance that the licensee does not respond.

3.6.2 Many licences for service providers

In addition to the main licence for the network operator, there will be additional licences available for service providers. The regulator may issue invitations to tender for services where there is an unfulfilled demand or a lack of competition. This system allows the regulator to shape the development of the market. Otherwise, applicants may approach the regulator and request a licence.

Major telecoms operators, overseas companies and local entrepreneurs may apply for these licences. They will pay a fee for the licence once their proposals have been approved by the regulator. The approval will involve examining the credentials of applicants against defined criteria and judging their competence to operate. There may be an annual fee for renewing the licence.

These service providers will pay the licensed network operator for the use of the network accordingly to a regulated schedule of charges. The network operator will be obliged to accommodate their requirements within the terms of the licence.

3.7 MANAGING THE TRANSITION

The Advisory and Finance Committee has recognised that the development of world class telecoms services for the Bailiwick is a strategic and corporate issue rather than the responsibility of one States committee, at present the Telecommunications Board.

The Committee has also recognised the urgency of securing world class telecoms services and the need to ensure that existing telecoms services do not deteriorate, and indeed are developed as much as is practicable during the interim period.

The Committee has noted the recommendation of Analysys that an “Interim Board” should be formed to drive the transition process. The Committee has also considered how this may be achieved whilst maintaining continuity and the statutory powers of the Telecommunications Board.

The Committee is therefore proposing that the constitution of the Telecommunications Board should be expanded by four members, two appointed by the Advisory and Finance Committee and two appointed by the Board of Industry. The expanded Telecommunications Board will then benefit from strong links with the strategic and corporate authority of the Advisory and Finance Committee and with the responsibilities of the Board of Industry for facilitating ecommerce and developing the regulatory process. The Constitution of the States Review Committee has been consulted on this proposal and raises no objection.

During the transition from the current arrangements for provision of telecoms services to those described in this policy letter, it will be necessary to do more than just maintain current services. Short-term subcontracting to develop the network and launch new services will be necessary. This may be expensive, but it is essential. Otherwise, the telecoms services will become inadequate for the development of

ecommerce and potential telecoms operators will be dissuaded from submitting proposals to take on an outdated network in a declining market.

The Committee is proposing that the expanded Telecommunications Board be directed to form an Advisory Panel consisting of representatives of the Board, other interested parties and experts who can contribute to the implementation of the approach described in this policy letter. It is not anticipated that the full expanded Telecommunications Board will deal with the full range of the Board's responsibilities as this would be unnecessarily cumbersome. It is anticipated that the current "core" membership of the Board will be delegated to deal with operational matters with the full Board convened to deal with transitional matters and the recommendations of the Advisory Panel.

The IT in Society Working Group will be reformed under a new name with a structure which reflects the remit of the expanded Telecommunications Board, the Advisory Panel and of other States committees and other parties with interests or responsibilities on wider IT, Internet and ecommerce matters. A senior Civil Servant will be seconded full time to coordinate the work of the Group and any cross-committee issues arising therefrom. The Advisory and Finance Committee is seeking an increase of £100,000 in its Strategic and Corporate Measures budget for 2000 to cover staff and other costs incurred by the restructured Working Group.

To implement the transition from the current arrangements in as short a timescale as possible, the Advisory and Finance Committee, expanded Telecommunications Board and Board of Industry will need to develop and decisively implement policies which may in other circumstances have been put to the States for endorsement. The Committee is therefore proposing that it and the other two Boards be authorised to implement the transition without further reference to the States except on those matters which, to achieve, require a formal resolution of the States. This will include the enactment of the necessary legislation and the final decision on the terms for the transfer of assets to the network operator granted a licence under the regulatory arrangements.

The Committee undertakes to keep the States advised on progress with the transition, as appropriate. The States will of course be able to exercise strategic level control on the future provision of telecoms services through the mechanism of "States guidance" required under the regulatory arrangements.

The Committee itself has retained Analysys to advise on the initial phases of implementing the approach described in this policy letter and will be seeking to enter into a longer-term contract with that company or another body with appropriate expertise, knowledge and resources. The Advisory and Finance Committee is seeking an increase of £250,000 on its Strategic and Corporate Measures budget for 2000 to cover the cost of retaining consultants to advise it on this matter.

During the transition period it is essential that the Telecommunications Board is able to secure and retain staff with the skills necessary to maintain and develop present telecoms services. The Committee proposes that, with immediate effect, the expanded Telecommunications Board is excluded from the requirements of the Staff Number Limitation Policy. The Committee is also proposing that, subject to the resolution of contract of employment and other associated issues, the Telecommunications Board

assumes responsibility from the Civil Service Board for matters relating to the pay and conditions of its staff. The Committee will liaise with the Civil Service Board, the Telecommunications Board and staff representatives to resolve any such issues arising from this transfer of responsibility and the Committee will oversee the exercise of these responsibilities by the Telecommunications Board. The Civil Service Board raises no objection to these proposals.

In preparation for the commercialisation process, the Advisory and Finance Committee had made provision of £100,000 in its Strategic and Corporate Measures budget for 1999 to cover the costs of outsourcing the development of regulatory legislation by the Board of Industry. None of that sum has been expended and it will be carried forward in unspent balances to 2000. In addition, the Advisory and Finance Committee is seeking a further £250,000 to expedite the drafting of such legislation and any other legislation required to facilitate ecommerce and to cover the costs incurred by the appointment of a shadow Regulator.

The sums referred to in the paragraphs above will be taken from the General Revenue Account Reserve but it must be stressed that they are only best estimates based on current information. The Committee may in the 2000 Policy and Resource Planning Report have to revise those sums in the light of experience. They should however be considered as one-off costs incurred in order to help safeguard existing economic activity, including financial services and to facilitate the development of ecommerce which could become a significant new driver of the economy. It is anticipated that as a result of the process being funded by this expenditure, future public sector income streams will be increased.

The views of the present Telecommunications Board on the approach described in this policy letter are given in the letter dated 21 December 1999 attached as Appendix II.

3.8 RECOMMENDATIONS

In consideration of sections 1 and 2, the Advisory and Finance Committee recommends the States to:

1. note the progress made to date in promoting the exploitation of the benefits of IT in Society and the enactment of legislation to make the Bailiwick an attractive location for the establishment of electronic business activities;
2. agree that the development, implementation and marketing of a detailed ecommerce strategy and creating the conditions for the development of ecommerce is essential for the future economic wellbeing of the Bailiwick;
3. agree that a pre-requisite to the development of ecommerce in the Bailiwick is the availability of world-class telecommunications services;
4. agree that priority be given to taking whatever steps are necessary to secure world-class telecommunications services for the Bailiwick

In consideration of section 3, the Advisory and Finance Committee recommends the States to:

5. agree that the future provision of telecommunications services for the Bailiwick be by way of the controlled licensing of new operators along the lines described in sub-section 3.5.5 and section 3.6 of this Policy letter;
6. authorise the Advisory and Finance Committee, the Telecommunications Board and the Board of Industry to implement the transition to the arrangements referred to in 5 above and to refer to the States only those matters which require a formal resolution of the States;
7. note the undertaking given by the Advisory and Finance Committee to keep the States advised on progress with the transition process as appropriate;
8. agree that the Constitution and Operation of States Committees prescribed by resolution of the States of 30th April 1992, in pursuance of the States Committees (Constitution and Amendment) (Guernsey) Law, 1991 and amended by section 11(4) of the Reform (Election of Conseillers and Minor Amendments) (Guernsey) Law, 1993 and by resolutions of the States of 25th November 1992, 30th March 1994, 26th July 1995 and 31st July 1996 be further amended, with effect from the 1st February 2000, by adding a new sub-paragraph after 19(21) as follows:

"(22). The Constitution of the States Telecommunications Board shall be:

- a) A President who shall be a sitting member of the States.
- b) Four members who shall be sitting members of the States.
- c) Two members who need not be sitting members of the States.
- d) Two members of the States Advisory and Finance Committee, appointed by that Committee.
- e) Two members of the States Board of Industry appointed by that Board.

Paragraphs 5, 6, 9 and 10 shall apply in respect of (a), (b) and (c) above. The first members appointed pursuant to (d) and (e) above shall hold office until 31st May 2002. The Committee and Board respectively, shall during the month of May 2002 and triennially thereafter make appointments pursuant to (d) and (e) above. If a member appointed pursuant to (d) or (e) ceases to be a member of the Committee or Board, as the case may be, before the expiration of the term of office for which he was appointed, a new member shall be appointed by the Committee or Board to serve the unexpired portion of that member's term of office.";

9. direct the Telecommunications Board to form an Advisory Panel consisting of representatives of the Board, other interested parties and experts who can contribute to the implementation of the new arrangements for the provision of telecommunications services as proposed in 5 above;

10. agree that the Strategic and Corporate Measures budget of the Advisory and Finance Committee for 2000 shall be increased by the sum of £600,000 to cover the work of the restructured IT in Society Working Group, the outsourcing of the drafting of the legislation necessary to implement the new arrangements for the provision of telecommunications services, the appointment of a shadow Regulator and for the appointment of consultants;
11. subject to approval of recommendation 5 above, agree that:
 - a) with immediate effect the Telecommunications Board shall be excluded from the provisions of the States Staff Number Limitation Policy;
 - b) subject to resolution of contract of employment and other associated issues, the Telecommunications Board shall assume responsibility for matters relating to the pay and conditions of its staff;
 - c) the Advisory and Finance Committee shall oversee the exercise of the responsibilities of the Telecommunications Board for staff matters.

I have the honour to request that you will be good enough to lay this matter before the States with appropriate propositions.

I am, Sir,
 Your obedient Servant,
 L. C. MORGAN,
 President,
 States Advisory and Finance Committee.

APPENDIX I - ANALYSYS COMPANY PROFILE AS PROVIDED BY ANALYSYS

Analysys Ltd is Europe's leading independent telecoms consultancy, with a growing global reputation. Our understanding of the complex interactions of technology, economics and regulation enables us to work with players throughout the telecoms value chain. We have over 150 staff in offices in Cambridge, London, Glasgow, Madrid, Paris, Kuala Lumpur and San Francisco.

Analysys Consultancy is respected for the creative and rigorous methods it employs in strategy evaluation, financial modelling and information provision, including investment appraisal, costs and revenues analysis, regulatory reform studies, policy formulation, market entry strategies and demand forecasting.

Analysys Publications and Online Services produces authoritative reports on the dynamics of telecoms, and is at the forefront of the design and development of online systems for the delivery of facts and informed analysis.

Analysys Web Systems delivers strategy, design, implementation and hosting services to companies aiming to take commercial advantage of the Internet, focusing on web-based information management, e-publishing and ecommerce applications.

Our clients include:

Operators: 9 Telecom Réseau, Albacom SpA, AT&T, Belgacom, BT, BT Cellnet, Cable & Wireless, Cable i Televisió de Catalunya, Cablelink, CWC, Daya Mitra Malindo Consortium, Deutsche Telekom, Eircom, Eircom International, Energis Communications, France Telecom, GTS Carrier Services, Hutchison Telecommunications (Hong Kong) Limited, ImpSat, Inmarsat, Kingston Communications, KPN Telecom, MCI WorldCom International (UK), One 2 One, ONO, Portugal Telecom, Red Eléctrica de España, Retevisión, RWE Telliance, ScottishTelecom, Sonera, Swisscom, Telecel Comunicações Pessoais SA, Telecom New Zealand, Tele Danmark, Teledesic, Telefónica, Telekom Malaysia, Telenor, Telia, Telkom SA, Telstra, TIME Telekom, Unisource, VIAG Interkom, Vodafone Group

Equipment manufacturers: Alcatel, Canon, DaimlerChrysler Aerospace AG, Fujitsu, Lucent Technologies Inc, Marconi Communications, Nokia, Nortel Networks, Siemens, SR Telecom

Major corporates: Boots, Hewlett Packard, Reuters, IBM, Marshall Group, Saladin, Thomas Cook, Texaco

Banks and investment institutions: Banque Paribas, Chase Manhattan plc, Citibank, Commonwealth Development Corporation, Deutsche Morgan Grenfell, European Bank for Reconstruction and Development, Gaz et Eaux, GE Capital Services Structured Finance Group Inc, Incepta, ING Barings, Lazard Frères, Lloyds Bank, Nortel Networks plc – Customer Finance, N M Rothschild & Sons, Royal Bank of Scotland, Salomon Smith Barney, World Bank Group / International Finance Corporation

Policy-makers and regulators: ATM Forum, Autorité de Régulation des Télécommunications (ART), Bundesamt für Kommunikation (Switzerland), CONATEL (Venezuela), Department of Trade and Industry (UK), European Commission, Forfás (Republic of Ireland), Hoofddirectie Telecommunicatie en Post (The Netherlands), Institut Belge des Services Postaux et des Télécommunications (Belgium), Instituto das Comunicações de Portugal, Jabatan Telekom Malaysia, Office of the Director of Telecoms Regulation (Republic of Ireland), Oftel (UK), Post & Telestyrelsen (Sweden),

Radiocommunications Agency (UK), Regulierungsbehörde für Telekommunikation und Post (Germany), Telecommunication Authority of Singapore

APPENDIX II – LETTER FROM PRESIDENT, TELECOMMUNICATIONS BOARD

Conseiller L C Morgan
President - Advisory & Finance Committee
Sir Charles Frossard House
PO Box 43
La Charroterie
St Peter Port
GY1 1FH

21 December 1999

Dear Conseiller Morgan

THE FUTURE PROVISION OF TELECOMS SERVICES FOR THE BAILIWICK

The Guernsey Telecoms Board is pleased to be able to comment on the Policy Letter to be placed before the States on the subject of the future provision of telecoms services for the Bailiwick.

The Board believes that this initiative heralds the most important development in the delivery of telecoms services since the States set up the first telephone service in the latter years of the last century.

In recent times the pace of change in telecoms, in particular the impact of the internet and the explosion in mobile-based services, have brought about the need for a new approach. It is also clear that e-commerce will have a fundamental impact on many aspects of business and Island life and that the Bailiwick must not be left behind.

It was with these points in mind that, earlier this year, the Guernsey Telecoms Board commissioned Analysys Ltd, industry specialists, to carry out an independent review.

The Board, by majority, fully endorses the States Advisory and Finance Committee Policy Letter, which reflects the proposals recommended by Analysis Ltd. The Board, also by majority, is supportive of the other related Policy Letters submitted by the States Civil Service Board and by the States Board of Industry.

In the current competitive climate, and given current difficulties regarding the retention of skilled technical staff, the Board is pleased to note that the States are being recommended to remove the existing constraints imposed under the Staff Number Limitation Policy and the Civil Service Board controls on pay and

conditions. It is noted that the new interim arrangements will be monitored by the States Advisory and Finance Committee. Despite the removal of these constraints, the Board has concerns about being able to 'GUARANTEE' a workforce for the new employer in the manner referred to in the Civil Service Board Policy Letter. We will, of course, endeavour to ensure that the current difficulties are overcome.

The majority of the members of the Guernsey Telecoms Board are fully committed to this approach, have been delighted with the level of importance placed on this matter by the States Advisory and Finance Committee and the other Central Committees, and look forward to working with them during the transition period.

Yours sincerely,

(Signed)

M E W BURBRIDGE
President

The States are asked to decide:—

III.— Whether, after consideration of the Report dated the 21st December, 1999, of the States Advisory and Finance Committee, they are of opinion:-

1. To note the progress made to date in promoting the exploitation of the benefits of IT in Society and the enactment of legislation to make the Bailiwick an attractive location for the establishment of electronic business activities.
2. That the development, implementation and marketing of a detailed ecommerce strategy and creating the conditions for the development of ecommerce is essential for the future economic wellbeing of the Bailiwick.
3. That a pre-requisite to the development of ecommerce in the Bailiwick is the availability of world-class telecommunications services.
4. That priority be given to taking whatever steps are necessary to secure world-class telecommunications services for the Bailiwick.
5. That the future provision of telecommunications services for the Bailiwick shall be by way of the controlled licensing of new operators along the lines described in sub-section 3.5.5 and section 3.6 of that Report.
6. To authorise the States Advisory and Finance Committee, the States Telecommunications Board and the States Board of Industry to implement the transition to the arrangements referred to in 5 above and to refer to the States only those matters which require a formal resolution of the States.
7. To note the undertaking given by the States Advisory and Finance Committee to keep the States advised on progress with the transition process as appropriate.
8. That the Constitution and Operation of States Committees prescribed by resolution of the States of the 30th April, 1992, in pursuance of the States Committees (Constitution and Amendment) (Guernsey) Law, 1991, and amended by section 11(4) of the Reform (Election of Conseillers and Minor Amendments) (Guernsey) Law, 1993, and by resolutions of the States of the 25th November, 1992, 30th March, 1994, 26th July, 1995, and 31st July, 1996, shall be further amended, with effect from the 1st February, 2000, by adding a new sub-paragraph after 19(21) as follows:

“(22) The Constitution of the States Telecommunications Board shall be:

 - (a) A President who shall be a sitting member of the States.
 - (b) Four members who shall be sitting members of the States.
 - (c) Two members who need not be sitting members of the States.
 - (d) Two members of the States Advisory and Finance Committee, appointed by that Committee.
 - (e) Two members of the States Board of Industry, appointed by that Board.

Paragraphs 5, 6, 9 and 10 shall apply in respect of (a), (b) and (c) above. The first members appointed pursuant to (d) and (e) above shall hold office until 31st May, 2002. The Committee and Board respectively, shall during the month of May 2002 and triennially thereafter make appointments pursuant to (d) and (e) above. If a member appointed pursuant to (d) or (e) above ceases to be a member of the Committee or Board, as the case may be, before the expiration of the term of office for which he was appointed, a new member shall be appointed by the Committee or Board to serve the unexpired portion of that member's term of office."

9. To direct the States Telecommunications Board to form an Advisory Panel consisting of representatives of that Board, other interested parties and experts who can contribute to the implementation of the new arrangements for the provision of telecommunications services as proposed in 5 above.
10. That the Strategic and Corporate Measures budget of the States Advisory and Finance Committee for 2000 shall be increased by the sum of £600,000 to cover the work of the IT in Society Working Group, the outsourcing of the drafting of the legislation necessary to implement the new arrangements for the provision of telecommunications services, the appointment of a shadow Regulator and for the appointment of consultants.
11. Subject to the approval of 5 above to agree that:
 - (a) with immediate effect the States Telecommunications Board shall be excluded from the provisions of the States Staff Number Limitation Policy;
 - (b) subject to resolution of contract of employment and other associated issues, the States Telecommunications Board shall assume responsibility for matters relating to the pay and conditions of its staff;
 - (c) the States Advisory and Finance Committee shall oversee the exercise of the responsibilities of the States Telecommunications Board for staff matters.

A. C. K. DAY

Deputy Bailiff and Deputy President of the States

The Royal Court House,
Guernsey.
The 7th January, 2000.

