

PUBLIC CONSULTATION

A Consultation on a Draft Regulation on Wireless
Telecommunications Network Facility Sharing

A Public Consultation Document Issued by the
Telecommunications Regulatory Authority

11 August 2008

TOD/0808/175

The address for responses to this document is:

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Authority's email address at consult@tra.org.bh

The deadline for responses is **4pm on 8 September 2008**

Purpose: To consult on a Regulation regarding the implementation of a Wireless Telecommunications Network Facility sharing regime applicable to all Licensees that own, manage or lease Wireless Telecommunications Network Facilities.



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A Consultation on a Draft Regulation on Wireless Telecommunications Network Facility Sharing

1. Introduction and Background

- 1.1 This Consultation is issued pursuant to the Authority's Consultation Process Regulation issued by the Authority on 10 August 2003¹.
- 1.2 On 3 June 2008, the Telecommunications Regulatory Authority of the Kingdom of Bahrain ("TRA") issued a Statement on the Strategic and Retail Market Review announcing a comprehensive package of regulatory measures. One measure is the introduction of a third mobile telecommunications network operator ("MNO"). TRA indicated it would actively encourage the mast sharing and other relevant facilities for wireless telecommunications sites.
- 1.3 This Regulation will introduce a Wireless Telecommunications Network Facility sharing regime applicable to all Licensees that own, manage or lease such facilities.

2. Proposed Measure

- 2.1 TRA has therefore prepared a draft Regulation on Wireless Telecommunications Network Facility sharing in accordance with sections 3(c)(1) and 3(c)(13) of the Telecommunications Law.
- 2.2 A copy of the Draft Regulation is attached as Annex 1 of this Consultation Document.

3. Consultation

- 3.1 The Authority seeks the comments of the interested parties on the proposed measure.
- 3.2 All comments shall contain a brief statement explaining the interest of the party submitting the comments in relation to the draft Regulation. In addition, the interested party must include as part of its comments its:

¹ Arabic and English versions of the Consultation Process Regulation, Regulation 1 of 2003, can be found at <http://www.tra.org.bh/en/LegalRegulations.asp>. Note that only the Arabic version of Consultation Process Regulation may be relied upon for legal purposes. The English translation is published for information purposes only.

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1. name;
 2. name of principal contact person;
 3. physical address;
 4. telephone number;
 5. fax number; and
 6. email address.
- 3.3 Upon receipt of the comments from stakeholders TRA will consider such comments to assist in finalising the Regulation.
- 3.4 Comments should be provided to the Authority by no later than 4pm on 8 September 2008.
- 3.5 The Authority may, but is not obliged to, make comments public. Please see article 10 of the Consultation Process Regulation for further details.

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Annex 1

Wireless Telecommunications Network Facility Sharing

A Regulation Issued by the Telecommunications
Regulatory Authority

August 2008

Purpose: To implement a Wireless Telecommunications Network Facility Sharing regime applicable to all Licensees that own, manage or lease Wireless Telecommunications Network Facilities.

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Preamble

On 3 June 2008, the Telecommunications Regulatory Authority of the Kingdom of Bahrain (“TRA”) issued a Statement on the Strategic and Retail Market Review announcing a comprehensive package of regulatory measures. One measure is the introduction of a third mobile telecommunications network operator (“MNO”). TRA indicated it would actively encourage the mast sharing and other relevant facilities for wireless telecommunications sites.

The sharing of wireless telecommunications network facilities contributes to alleviating the concerns of the public and environmental and planning authorities over the multiplication of masts and towers.

Wireless telecommunications network facilities and infrastructure are not easily replicable and when obstacles to their deployment are significant, the sharing of available facilities and infrastructure would be highly desirable as it facilitates entry while safeguarding the interests of the public and concerns of environmental and planning authorities. Therefore, facility sharing together with co-location can avoid inefficient and unnecessary duplication of existing wireless telecommunications network facilities and infrastructure.

It is with this consideration in mind that TRA is issuing this regulation.

Legal Basis

This Regulation is issued by the Telecommunications Regulatory Authority (TRA) of the Kingdom of Bahrain under the following sections of the Telecommunications Law promulgated by Legislative Decree No. 48 for the year 2002 (“the Law”).

Section 3(b)(2) of the Law requires TRA to carry out its duties in a manner best calculated to, amongst other things, promote effective and fair competition among new and existing Licensed Operators.

Section 3(c)(13) of the Law grants TRA the power to, where necessary, enforce the sharing by Public Telecommunications Operators of the benefit of facilities and property.

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Definitions

Any word, phrase or expression used in this Regulation shall, unless the context requires otherwise or it is expressly defined herein, have the same meaning as in the Telecommunications Law.

References to a specific gender encompass all other genders.

References to a word or phrase in the singular encompass references to words or phrases in the plural, and vice versa.

The terms below shall have the following meaning for the purposes of this Regulation only:

“Owning Licensee” means a Licensee that owns, manages or leases a Wireless Telecommunications Network.

“Negotiating Licensees” means a Requesting Licensee and Owning Licensee negotiating a Sharing Agreement.

“Referring Party” means the Negotiating Licensee that refers a dispute to TRA regarding the failure to reach a Sharing Agreement within one month of commencement of negotiations, in accordance with Article 10 of this Regulation.

“Requesting Licensee” means a Licensee that submits a Sharing Request to an Owning Licensee.

“Sharing Agreement” means an agreement between an Owning Licensee and a Sharing Licensee for sharing the Owning Licensee’s Wireless Telecommunications Network Facilities.

“Sharing Licensee” means a Licensee that shares the Wireless Telecommunications Network Facility of an Owning Licensee subject to a Sharing Agreement.

“Sharing Request” means a written request from the Sharing Licensee to the Owning Licensee to share a Wireless Telecommunications Network Facility.

“Site” means a place where a Wireless Telecommunications Network Facility or group of similar facilities is located.

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“Wireless Telecommunications Network Facility” means any part or parts of the infrastructure required for the operation of a wireless telecommunications network as stipulated in Article 2 of this Regulation.

Article 1 – Objectives and Scope of the Regulation

- 1.1 The purpose of this Regulation is to implement a Wireless Telecommunications Network Facility sharing regime applicable to all Licensees that own, manage or lease a Wireless Telecommunications Network Facility in accordance with sections 3(c)(1) and 3(c)(13) of the Telecommunications Law.
- 1.2 The sharing of Wireless Telecommunications Network Facilities should assist in:
 - (a) promoting more environmentally friendly practices, through the minimization of the need to construct and maintain masts;
 - (b) encouraging socially efficient investment in infrastructure and avoiding wasteful duplication of infrastructure;
 - (c) reducing operating costs of all wireless telecommunications network operators;
 - (d) promoting fair competition through the sharing of wireless telecommunications networks facilities which are not easily duplicable and whose multiplication raises environmental and general public concerns;
 - (e) ultimately providing benefits to consumers in terms of price, quality and availability of services, as well as their environmental concerns.

Article 2 – Wireless Telecommunications Network Facilities Governed by this Regulation

- 2.1 Any Licensee that owns, leases or manages the following Wireless Telecommunications Network Facilities is obliged to negotiate and enter into a Sharing Agreement, upon request, with respect to these facilities:
 - (a) Wireless Telecommunications Sites, including but not limited to land, space and access to such sites;

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- (b) Masts, towers and poles or other similar structures;
- (c) Buildings, shelters and rooms, including access to such premises;
- (d) Utilities required for the operation of Wireless Telecommunications Sites, including but not limited to power, cooling, fire protection and earthing;
- (e) Cable access, including but not limited to ducts, routes and trays.

Article 3 – Obligations to Share Facilities

- 3.1 Licensees wishing to share Wireless Telecommunications Network Facilities shall have the right to negotiate and come to agreement on terms and conditions of a Sharing Agreement. The terms and conditions of such Sharing Agreements shall be in accordance with the principles and conditions stipulated by this Regulation.
- 3.2 Wireless Telecommunications Network Facility sharing shall be provided based on the principles of impartiality and non-discrimination.
- 3.3 The Owing Licensee shall be obliged to share Wireless Telecommunications Network Facilities with other Licensees on a first-come, first-served basis, determined by the chronological order in which it receives requests for sharing its Wireless Telecommunications Networks Facilities.
- 3.4 All negotiations for Sharing Agreements must be conducted by all parties in utmost good faith. The Owing Licensee of the facility must not:
 - (a) Obstruct or delay negotiations;
 - (b) Refuse to provide information relevant to an agreement, including information necessary to identify the Wireless Telecommunications Network Facilities needed and relevant costing information.

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- 3.5 Negotiating Licensees should provide sufficient information to each other during the negotiation process on issues related to the facility sharing. Such information should be treated as confidential by the Negotiating Parties at all times. Response to any such request should be prompt to avoid delay.
- 3.6 Every Sharing Agreement shall be in writing and shall specify the contractual terms and conditions agreed on by the parties.
- 3.7 To facilitate improved co-ordination and compatibility of sharing facilities, the Sharing Agreement must employ standard procedures for the provision and operation of Wireless Telecommunications Network Facilities under the Sharing Agreement. The procedures should cover at least the areas of:
- (a) the Sharing Licensee's physical access and visiting rights to the Telecommunications Facility;
 - (b) maintenance, safety and cleaning;
 - (c) fault clearance;
 - (d) emergency;
 - (e) security.
- 3.8 The parties to the Sharing Agreement must submit to TRA an original executed final Sharing Agreement within 3 days of execution of the Sharing. The submitted Sharing Agreement must be accompanied by a written declaration signed by both parties that the Sharing Agreement complies with the Law and the Regulation.
- 3.9 TRA may examine negotiated Sharing Agreements to ensure compliance with the Telecommunications Law, Licenses, this Regulation and any other related Regulation, and in particular to ensure that:
- (a) the agreement is efficient; and
 - (b) each party substantively retains its own network identity from both a commercial and technical perspective.
- 3.10 TRA may require that any Sharing Agreement is amended to rectify any failure to comply with the criteria of Article 3.9. TRA must

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provide written reasons for its decision to amend the Sharing Agreement. Decision of TRA to require that any Sharing Agreement is amended shall be implemented by the parties to such an agreement within 30 days unless TRA specifies another term in its decision.

Article 4 – Sharing Agreement Negotiation Procedure

- 4.1 Any Licensee seeking to share Wireless Telecommunications Network Facilities must submit its Sharing Request in writing to the Owning Licensee with the details of the facility required.
- 4.2 The Owning Licensee must have an application form that can be provided to the Requesting Licensee within 3 working days from receiving the Sharing Request. The form should contain all details and any other information required by the Owning Licensee to start the feasibility study.
- 4.3 Within 21 working days from the date of submission of the application form by the Requesting Licensee, the Owning Licensee must complete the feasibility study and provide his decision to the Requesting Licensee in writing. The decision may be to:
 - (a) Confirm the availability of the facility and proposal to start the procedure to complete a Sharing Contract;
 - (b) Confirm the availability of the facility subject to suggested reasonable amendments to the application and proposal to start the procedure to complete a Sharing Contract; or
 - (c) Reject a Sharing Request.
- 4.4 Once the feasibility study has been completed and availability of the facility is confirmed, the time frame for completing a Sharing Agreement should not exceed 21 working days from the acceptance letter of the Owning Licensee or, in case of decision stipulated in Article 4.3(b) of this Regulation, from the letter of the Requesting Licensee accepting the suggested amendments.
- 4.5 The time frame to commence sharing shall be in line with the time frame stipulated by the conditions of this Regulation in addition to any other reasonable time required to develop or alter the sharing facilities.

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- 4.6 The cost incurred by the Owing Licensee to develop or alter the sharing facility shall be settled in line with the conditions of this Regulation.
- 4.7 Upon execution of a negotiated Sharing Agreement the parties shall forward the agreement to TRA in accordance with article 3.8 of this Regulation.

Article 5 – Redevelopment and Alteration of Facilities

- 5.1 Licensees are encouraged to consistently pursue a policy of constant development and upgrading of their networks facilities so as to make adequate capacity and space available to other licensees for the sharing of facilities. Licensees (both Owing and Sharing) shall ensure that existing facilities are used efficiently and shall expediently free up the space on the facilities by removing any equipment, which is no longer necessary for the business of the respective Licensee.
- 5.2 Where the Requesting Licensee requests Facility Sharing on masts or towers and the existing capacity is fully utilized (taking into account the obligation to remove the unnecessary equipment), the Owing Licensee shall extend the facility to allow for sharing provided the facility is technically capable of withstanding the additional loads.
- 5.3 Where the masts and towers require extension, the latter shall be constructed in such a way that ensures clearance angles and minimum separation distances between antenna systems of different operators are respected and kept clear of obstacles. Each licensed operator may decide on the antenna configuration and positioning within his allocated mast-space, as long as clearances and distances from other licensed operator(s) are not violated.
- 5.4 The Requesting Licensee shall be obliged to pay to the Owing Licensee a once-off payment to compensate for the proportion of actual costs incurred by the Owing Licensee in carrying out the upgrade and alteration works to the facilities requested for sharing. The proportion of costs shall be related to the benefit incurred by the Requesting Licensee because of the upgrade or alteration compared with the benefit incurred by the Owing Licensee and any other existing or future Sharing Licensees.

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- 5.5 The cost of development or alteration required may be jointly assessed by the parties or, where the parties cannot agree or consider it to be most practical, then by an independent third party expert appointed by agreement of the parties or failing such agreement, by TRA, and shared at the percentage agreed by all parties, or in the case of failure to agree, by the independent third party expert.
- 5.6 The Owing Licensee shall give adequate written notice to other Licensees of its intention to develop and/or alter Wireless Telecommunications Network Facilities. The notice period shall not be less than six months for Wireless Telecommunications Network Facilities development and twelve months for collocation change.
- 5.7 A Requesting Licensee may request a site inspection if it is deemed necessary by it for the purpose of assisting that party to reach an informed decision.

Article 6 – Capacity Issues

- 6.1 Capacity or space shall be considered available where the existing facility is technically capable of accommodating extra Wireless Telecommunications Network Facilities and/or equipment (taking into account the obligation to remove the unnecessary equipment) and the available capacity or space is not reserved by the Owing Licensee for reasonable future use.
- 6.2 The Owing Licensee shall have the right to reserve reasonable capacity or space for future use, provided the Owing Licensee has a clearly demonstrable and reasonable plan to use such capacity or space within one year. Any such plan shall take into account possibility to free the capacity by removing the equipment, which is or will be no longer necessary for the business of the Owing Licensee and/or any Sharing Licensee.

Article 7 – Assessment of Sharing Feasibility

- 7.1 An Owing Licensee shall have the right to refuse a Sharing Request in the following cases:

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- (a) where the available space is either fully occupied (taking into account the obligation to remove the unnecessary equipment) or the remaining space is reserved for the Owing Licensee's or another Requesting Licensee's use, as specified within this document;
 - (b) where the sharing of a facility is not technically or economically feasible;
 - (c) where the Sharing Request, if granted, will constitute a threat to safety or affect the reliability of the Owing Licensee's network or services.
- 7.2 The Owing Licensee must provide detailed written reasons and justifications to the Requesting Licensee in case of sharing refusal. If possible, the Owing Licensee shall propose amendments to the requested sharing in order to overcome the reasons for possible rejection of the Sharing Request. A copy of the response must be sent to TRA.
- 7.3 The Requesting Licensee may file a dispute with TRA within 10 working days from receiving the Owing Licensee's rejection letter or a letter suggesting amendments to the application of the Requesting Licensee. TRA shall investigate the case with the full cooperation of all parties, including the submittal of all related information, and make a final determination.

Article 8 – Safety & Protection Arrangements

- 8.1 Licensees shall make every effort to ensure the efficient and safe use of spaces as a result of Sharing Agreements.
- 8.2 Mast and tower sharing shall require consideration of load bearing capacity, azimuth angle of different Licensees, tilt of the antenna, and height of the antenna before an agreement can be executed.
- 8.3 The Licensees working on masts and towers shall be responsible for informing their staff about and protecting them from any possible danger as a result of their work.
- 8.4 Negotiating Licensees may request some form of physical separation of their Telecommunications Equipment to ensure internal and

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external security, reduce interference and limit damage to each other's Telecommunications Equipment.

8.5 The degree to which separation of Telecommunications Equipment will be necessary will be determined, among other things, by:

(a) Prevailing local circumstances;

(b) Available space;

(c) Special requirements of Requesting Licensee;

(d) Level of standardization of Telecommunications Equipment; and

(e) Risk of damage to Telecommunications Equipment.

Article 9 – Sharing Facilities and Component Pricing

9.1 Prices for sharing Wireless Telecommunications Network Facilities shall be fair and reasonable, based on the actual cost incurred by the provider of the facility.

9.2 TRA may require any Licensee to provide justification for their sharing facilities and component prices and may, where appropriate, require that any or all prices be adjusted so that they are in accordance with the provisions of the Telecommunications Law and conditions stipulated by this document.

Article 10 – Dispute Settlement

10.1 Subject to any other Regulation issued by TRA with respect to resolution of inter-operator disputes the following procedure will apply. The dispute resolution process and procedure in this Regulation will be a paper only process, except when TRA determines that oral examination is necessary in order to determine the dispute.

10.2 Without prejudice to Article 7.3 of this Regulation, if after one month of the commencement of negotiations for the sharing of Wireless Telecommunications Network Facilities under this Regulation the parties have not reached agreement either party may refer the matter to TRA for purposes of resolution.

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- 10.3 The Referring Party must submit its complaint in writing to TRA with all supporting documentation and evidence, including correspondence between the parties and sworn statements from any witnesses it wishes to rely upon.
- 10.4 TRA must acknowledge receipt of the submission within 1 day of receipt of the submission.
- 10.5 Within 7 days of receipt of the submission TRA must determine if the Referring Party has a valid complaint or not. If TRA determines that the Referring Party does not have a valid complaint it must write to the Referring Party within 14 days of receipt of the submission explaining in detail its reasons for considering the Referring Party's submission and case to be invalid.
- 10.6 If TRA determines that the Referring Party has a valid complaint it will forward the dispute to the Other Party and request a response within 14 days from the date of TRA forwarding the dispute to the Other Operator, unless TRA specifies otherwise.
- 10.7 The Other Party must respond to TRA within 14 days from the date on which TRA forwarded the dispute to the Other Operator, unless TRA specifies otherwise.
- 10.8 The Other Party's response must respond to each point raised by the Referring Party and must provide full supporting documentation and evidence, including correspondence between the parties that may not have been relied upon by the Referring Party and sworn statements from any witnesses it wishes to rely upon.
- 10.9 Upon receipt of the Other Party's response TRA will consider whether further documentary evidence is required and make written requests for same from either or both parties.
- 10.10 Upon receipt of all required documentary evidence TRA will notify the parties of the expected date of its decision on the resolution of the dispute.
- 10.11 Should TRA determine that the Owning Licensee should share the Wireless Telecommunications Network Facilities in question, the parties must enter into a Sharing Agreement as per article 4.5 above.

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10.12 TRA's power to issue decisions includes an order imposing Telecommunications Facility sharing arrangements between the parties.

Article 11 – Enforcement

11.1 A breach of this Regulation will be deemed to be a breach of sections 3(c)(1), 3(c)(13) and 57(h) of the Telecommunications Law and of the relevant infrastructure sharing provisions of the Licenses as they may be from time to time, and will be enforced under section 35 of the Telecommunications Law.

Article 12 – Entry into Effect

12.1 This Regulation will come into effect 14 days from its date of publication in the Official Gazette.

Issued by

Alan Horne
General Director
in Manama, Kingdom of Bahrain

on [date]

End of Regulation