

**TRA's response to questions on the**

**Invitation to Tender for a National Fixed Wireless  
Services (NFWS) License**

**Issued by the Telecommunications Regulatory  
Authority (TRA)**

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## TRA's response to questions on the

### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

#### **TRA's response to questions on the Invitation to Tender for a national fixed wireless services license**

On 5 October 2006 the TRA published an Invitation to Tender ("ITT") for the grant of two national fixed wireless services licenses ("NFWS Licenses") to be used for the provision of fixed wireless access ("FWA") in the Kingdom of Bahrain.

Under section 2.2.6 of the ITT, interested parties were invited to register and submit questions on the ITT. The TRA undertook to publish anonymized responses to these questions where the information would be material to other interested parties and not confidential to the asking party.

In preparing this public response to questions that have been asked by parties, the TRA has had due regard to: whether the question from the asking party was on the ITT; whether the information in the answer would be material to other interested parties; whether the asking party has stated that it considered that the question or response could be confidential; and whether the TRA, having regard to the answer, considered that the question and answer should indeed be confidential.

**The responses to questions published herein are for information purposes only. Parties interested in participating in the auction process for the NFWS Licenses should consult the ITT and seek their own legal and investment advice.**

Finally, please note that the TRA intends to make a number of changes to the ITT as a result of consideration of questions submitted by registered parties. These changes shall be published in accordance with the procedure stated in section 1.6 of the ITT. The amended version of the ITT shall be available on the TRA's website by 12 November 2006. Parties that have already registered under the ITT shall be provided with a description of the changes. Other parties that register under the ITT will be provided with this description upon request, after registration.

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#### ITT: Section 1.2

1. *[Confidential: Party's name] seeks clarification regarding the original Arabic documents, whether in this regards, TRA accepts translated documents from any translating office, or is their any accredited translating office in Bahrain that RA considers? OR if there are any obligations, certain procedures, or notarized translations required for the acceptance of the translation?*

The TRA does not have any requirements regarding the translation from documents that were drafted in Arabic. As stated in section 1.2.5 of the ITT, the primary language for communications between the Bidders and the TRA on all matters pertaining to the Auction and the award of the Licenses shall be English.

Therefore, Bids, including declarations and any supporting documentation, must be submitted in English. The submitting party must be confident that all documents reflect their intentions.

#### ITT: Section 2.4

2. *In relation to section 2.4.1, please confirm that a Bidder may bid on behalf of a Consortium of proposed shareholders in the Proposed Licensee.*

Section 2.4.1 of the ITT states that a Bidder "may bid on behalf of ... a yet-to-be-created entity (the Prospective Licensee)". "Consortium" is defined in the ITT as "... the set of legal persons who comprise the proposed shareholders of a Bidder's Prospective Licensee".

Therefore, a Bidder that is bidding on behalf of a yet-to-be-created entity (being the Proposed Licensee) is bidding on behalf of the Consortium of proposed shareholders in that Proposed Licensee.

3. *With reference to Clause 2.4: A Bidder may bid on behalf of itself or of a yet to be created entity (new company). If a legal entity incorporated in a country other than Bahrain is bidding can it make a bid at present in its existing name and later on incorporate a new company in Bahrain as a subsidiary after winning the license that can apply for said Licence in the name of said new subsidiary company? If yes, is there any information about the yet-to-be-formed new company required to be given at present? Are there any specific requirements for equity capital*

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*contributions by the bidder in new company? Is there any requirement for the Financial and Technical capacity of the new company to be proved? Also, how long does it take to legally incorporate an entity in Bahrain?*

Under clause 2.4.1, a Bidder may bid on behalf of a yet-to-be-incorporated entity. The Bidder does not need to be a company incorporated in the Kingdom of Bahrain but, pursuant to section 26(a) of the Telecommunications Law, the Prospective Licensee must be a juristic entity incorporated in the Kingdom of Bahrain or a branch of a foreign company licensed to operate in the Kingdom in accordance with the Commercial Companies Law prior to the grant of the NFWS License.

If a Bidder submits a Bid on behalf of a Prospective Licensee and it is intended that the Bidder will not be the sole shareholder in the Prospective Licensee, then the Bidder must ensure that it complies with the requirements in the ITT for bidding on behalf of a Consortium.

Such Bidders should have particular regard to section 2.9.4, which states that the Qualification Documentation should include financial and technical information relating to the Prospective Licensee. The guidance box on page 16 advises Bidders to include equity and debt funding and shareholder agreements. Further, under section 2.15.3 of the ITT, the Prospective Licensee should be formed "substantially in accordance with the representations made with [the] Bid". Any subsequent change of control of the Prospective Licensee would be subject to the rules of Regulation 3 of 2004, the Telecommunications Mergers and Acquisitions Regulation.

Thus, the Bidder may, if it so chooses, incorporate a local subsidiary (whether wholly owned or in accordance with the described share structure in the relevant Bid) after the Successful Bidders have been announced pursuant to section 2.14 of the ITT. However, a Successful Bidder cannot be described as having "won" the License until the License has been granted under section 2.15.7 of the ITT. A condition precedent to being granted the license is that the Prospective Licensee must have been formed in Bahrain under section 2.15.3 of the ITT.

Interested parties are therefore advised to seek independent legal advice regarding the time required to form a company in the Kingdom of Bahrain to satisfy themselves that they would be

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able to meet the requirement in section 2.15.3 in the event that they are announced as a Successful Bidder.

4. *Is it mandatory to have a local partner based in Bahrain if the bidder company is a company not yet incorporated in Bahrain?*

There is no obligation on Bidders to be based in the Kingdom of Bahrain or to have local partners based in Bahrain. Bidders should, however, ensure that they would be able to comply with section 2.15.3 of the ITT and section 26 of the Telecommunications Law should they be deemed to be a Successful Bidder.

5. *If, a local partner is mandatory, is there a minimum percentage equity holding required for the local partner?*

Please see the TRA's response to Question 4 above.

6. *[Confidential: Party name] has already registered in relation to this ITT. If [Confidential: Party name] decides to bid for the NFWS through a sister company within the [Confidential: Party name] group or a subsidiary of [Confidential: Party name], can [Confidential: Party name] "transfer" its registration to this sister company or subsidiary, or will the sister company or subsidiary have to re-register?*

Registration cannot be transferred between companies. Registered Parties have not at this stage been asked to provide information on the Prospective Licensees and, as such, are free to change these details.

#### ITT: Section 2.6

7. *Referring to the ITT document, page 6, can the deadline for receipt of the bid be extended beyond 28 November 2006?*

As stated in section 2.6.2, the Bid Submission Date shall be 28 November 2006. Whilst the TRA reserves its right to amend the timing of the Auction, including the Bid Submission Date, the TRA does not presently intend to delay the Bid Submission Date.

In any event, Bids shall not be accepted after 14.30 (in Bahrain) on the Bid Submission Date.

8. *Please confirm whether the Bidder may seal the envelope (for example, using a wax seal containing its Financial Bid and/or*

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*use other methods to ensure that its Financial Bid will not be tampered with or opened prior to the scheduled opening time on the Financial Bid Opening Day.*

The Bidder may seal the envelope in the manner described above. Bidders must, however, ensure that neither the envelope nor the manner of sealing indicates the value of the Financial Bid or provides any indications from which the value of the Financial Bid can be inferred.

9. *Please advise what measures the TRA will take to ensure the security and confidentiality of Financial Bids.*

For reasons of security, the TRA does not consider it appropriate at this stage to disclose how the Financial Bids will be stored. Once the auction process has been concluded, subject to any legal or regulatory prohibitions, if requested the TRA will provide this information to Bidders.

#### **ITT: Section 2.8**

10. *In relation to section 2.8.1, where Bid Forms are completed electronically, please confirm that it is acceptable for the Bid Forms to be copy typed and reproduced in a format that is not completely identical to the template Bid Forms in Annex 4 to the ITT (eg more space taken for an answer to one section may cause the next section to appear on a different page of the form to the template, font types may be different but will not be less than 10 pt etc).*

The suggested alterations to the Bid Forms are acceptable to the TRA provided that submitted forms are substantively in the same form as the Bid Forms in Annex 4 to the ITT.

#### **ITT: Section 2.9**

11. *In relation to section 2.9.3, please provide guidance as to what additional information (if any) to the minimum requirements set out at sections 2.9.3(a) to (f) the TRA considers it may be desirable for a Bidder to include about its business plan, in order for the TRA to be satisfied that the Bidder has a viable business plan.*

Bidders should provide the information specified in section 2.9.3 of the ITT and any further information that may be necessary to demonstrate to the TRA a viable business plan for offering telecommunications services using the NFWS License in



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the Kingdom of Bahrain. In the TRA's opinion, a viable business plan would be likely to include contingencies to deal with outcomes different from any central forecasts in the plan.

12. (a) Will the TRA accept an applicant rollout plan that deploys less than **[Confidential: Number of Points of Presence]** PoPs, which is the minimum number of PoPs that **[Confidential: Party name]** believes are necessary to viably provide mass market FWA services.

The TRA shall take into consideration all of the criteria described in section 4 when evaluating Qualification Documentation. Without reviewing the Qualification Documentation, the TRA cannot categorically state either that rollout plans deploying **[X]** PoPs would be rejected or that rollout plans deploying **[X+1]** PoPs would be accepted.

(b) Given **[Confidential: Party's Name]** below explanation as to how an NFWS licensee can meet the TRA's radio coverage requirements while only servicing one customer in the Kingdom, does the TRA plan to utilize any objective evaluation method in its licensing process for how an NFWS applicant will materially expand or be able to expand broadband penetration in Bahrain.

In accordance with section 2.9.3 of the ITT, each Bidder should include in its Qualification Documentation a description of its viable business plan for offering Telecommunications Services in the Kingdom of Bahrain. This should include, without limitation to the section, a description of its proposed rollout strategy and a financial forecast showing overall revenues and capital expenditure.

In addition, section 4.3 of the draft NFWS License requires the licensee to "provide the licensed services to any person that requests services offered on a commercial basis, subject to the licensee having any objective reason for not being in a position to offer the Requested Services to that person".

The TRA considers that, taken together, these requirements are sufficient to ensure that the NFWS licensees offer services that serve to meet the demand for the licensed services.

13. (a) If a requirement that was reflected in the IM is not found in the ITT, does that mean it is no longer required? For example, in Section 4.4.3 of the IM, point v on page 32 required applicants to show "contingencies if the out-turn is different from the plan." As

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*this requirement is not in the ITT, does that mean it is no longer a requirement?*

The Information Memorandum was published for information purposes only and was not a legally binding document. The auction rules, i.e. the requirements for the auction, are published in the Invitation to Tender.

Therefore, there is no rule that Bidders must include in the business plan information to show "*contingencies if the out-turn is different from the plan*". However, Bidders should note that it is their responsibility to ensure that the information provided in their Qualification Documentation meets all of the Qualification Criteria, including the requirement to provide a viable business plan for offering telecommunications services using the NFWS License in the Kingdom of Bahrain. In the TRA's opinion, a viable business plan would be likely to address contingencies to deal with outcomes different from any central forecasts in their plan.

*(b) In the case the above contingencies are required in the application, what sensitivity deltas is the TRA seeking with regard to applicants reflecting contingencies?*

Please see the TRA's response to Question 13(a) above. Although it is not a requirement of the Auction Rules to provide information on contingency plans, the TRA considers that, as part of best practice, a viable business plan would be likely to include contingencies to deal with outcomes different from central forecasts in the plan. The TRA does not consider it appropriate to provide further rules on how a Bidder should lay out its business plan within its Qualification Documentation. It would, however, expect the Qualification Documentation to clearly demonstrate a viable business plan, demonstrating, for example, an understanding of what the bidder considers to be the most significant risk factors in its plan and its approach to mitigate these risks in a way that will maintain the viability of the Licensee.

Please note that this does not prevent Bidders from providing such information, should they consider it appropriate to demonstrate that their Bid meets the Qualification Criteria.

14. *Please confirm that the information listed in 1(i) to (ix) on page 17 of the ITT is for guidance only, and that it is not necessary for a bidder to include all of this information in its Qualification Documentation in order for the TRA to establish that that*

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*Prospective Licensee has or may be reasonably expected to have in a timely manner the financial capacity to meet the obligations of the NFWS License and the Frequency License.*

As stated in section 1.5.3, the ITT “contains guidance to Bidders on a number of aspects of the Auction. Such guidance is not binding. Guidance is shown in italics and within text boxes.”

Therefore, the information listed in 1(i) to (ix) on page 17 of the ITT is for guidance only. No Bidder is formally obliged to provide any particular part of this information. Bidders should note, however, that it is their responsibility to ensure that they include in their Bid information sufficient to enable the TRA to conclude that the Bid complies with section 2.9.4 of the ITT. The TRA considers that in the absence of significant information of the type suggested by the guidance to bidders, it may be difficult for the TRA to conclude that the Bid does comply with section 2.9.4.

15. *Please confirm that the information listed in 2(i) to (v) in the box on page 18 is for guidance only, and that it is not necessary for a bidder to include all of this information in its Qualification Documentation in order for the TRA to establish that the Prospective Licensee has or may be reasonably expected to have in a timely manner the technical capacity to meet the obligations of the NFWS License and the Frequency License.*

Please see the TRA's response to Question 14 above.

Therefore the information listed in 2(i) to (v) on page 18 of the ITT is for guidance only. Bidders are not obliged to provide this information to the extent that it is not necessary to demonstrate compliance with the qualification criteria set out in the ITT.

Bidders should note, however, that it is their responsibility to ensure that they include in their Bid information sufficient to enable the TRA to conclude that the Bid complies with section 2.9.4 of the ITT. The TRA considers that in the absence of significant information of the type included in the guidance to bidders, it may be difficult for the TRA to conclude that the Bid does comply with section 2.9.4.

16. *Referring to the ITT document, page 18: as the proposed organization will be expanding over time, what is the timeframe for which the proposed organization should be valid?*

Please see the TRA's response to Question 14 above.

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Bidders are advised to consider the information available to them at the time of Bid submission when determining how far any forecasts should be made. Further, Bidders are advised to seek independent legal advice regarding the appointment or removal of directors and the application of Regulation 3 of 2004, the Telecommunications Mergers and Acquisitions Regulation.

17. *The services that the winning bidder will offer may include international services, ISP services, and value added services (which we understand will require separate telecommunications licenses). Shall the bidder include in its bid submission the revenues, capital expenditure, and operating expenditure associated with international calls, internet services, and value added services that will potentially be provided using the fixed wireless access.*

Section 2.9.3 states that Bidders should provide descriptions of their viable business plans for offering telecommunications services using the NFWS Licenses. Section 2.9.4 requires that Bidders provides sufficient information for the TRA to establish that, *inter alia*, the Prospective Licensee may be reasonably expected to have in a timely manner the financial capacity to meet the obligations of the NFWS License and the Frequency License.

In providing the above information, Bidders should pay due attention to legitimate sources of finances and business plans that are complementary to services provided under the NFWS License.

18. *Is the experience of FWA technology in the allocated band essential or could it be in any other frequency band too?*

The TRA is of the view that experience in a specific bandwidth is not necessary. However, Bidders should note that it is their responsibility to ensure that the information provided in their Qualification Documentation meets all of the Qualification Criteria, including the requirement to demonstrate that they have the technical capability to meet the obligations in the draft NFWS License.

19. *In section 2.9.3(e), one has to give a description of "elements of Business Plan that rely on interconnection with other licensed operators and access to the networks of other licensed operators". Does it mean anything more that considering the cost of Interconnect Usage Charges? Moreover, will TRA provide*

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*Interconnect assurances with other operators and what are the regulations regarding that?*

In order to properly assess a Bidder's Qualification Documentation, the TRA requires that Bidders consider interconnection charges and, in doing so, describe which services and/or elements of their businesses would rely on such interconnection. In addition to consideration of interconnection charges, Prospective Licensees may wish to include a description of the extent to which Prospective Licensees would expect to rely on interconnection agreements and a description of their anticipated network deployment.

For further information on interconnection charges and obligations, please see section 57 of the Telecommunications Law, Determination 4 of 2003, Dominance in Interconnection Markets, and Order 3 of 2006, Reference Interconnection Offer Order. These documents are available on the TRA's website.

20. *What evidences are required to show compliance to license obligations by the licensee?*

The TRA assumes that this question is in relation to the requirements of Section 2.9.4 of the ITT. This section states that Bidders should include in the Qualification Documentation sufficient information for the TRA to establish that the Prospective Licensee has, or may be reasonably expected to have in a timely manner, the technical and financial capacity to meet the obligations of the NFWS License and the Frequency License.

This section should be read in the light of the preceding section, section 2.9.3, which requires that the Bidder submit a viable business plan for offering the services under the NFWS License.

Guidance as to the information that the TRA would expect to be provided is listed in the guidance boxes on pages 17 and 18 of the ITT.

21. *Please confirm that the only information it is necessary for the bidder to provide in order for the TRA to establish that the Prospective Licensee is or, if not currently formed, may be reasonably expected to be, managed by persons fit and proper to do so is the last Bidder declaration in section 3 of Form D in Annex 4 to the ITT. If not, please advise what additional information the Bidder is required to provide in relation to this matter pursuant to section 2.9.5 of the ITT.*

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Bidders must comply with the requirements of section 2.9.5 of the ITT, which states that “*each person proposed to be a director of the Prospective Licensee [is required] to declare that he or she is a fit and proper person to be a director in accordance with the applicable law*”.

As noted in the question above, the declaration in Form D in Annex 4 to the ITT is to be made by the Bidder on behalf of the Prospective Licensee.

The TRA does not intend for Bidders to submit declarations from each proposed director, although each Bidder must satisfy itself that it may legitimately sign the relevant declaration in Form D in Annex 4 to the ITT.

If a Bidder has specific concerns regarding compliance with this requirement, it should obtain its own legal advice with regard to the circumstances specific to its proposed directors and compliance with section 2.9.5.

22. *Proposed directors of the prospective licensee must fulfill the conditions specified by Article 173 of the Commercial Companies Law of the Kingdom of Bahrain.*

*For the avoidance of doubt [Confidential: Party name] wants to know whether a declaration is enough for the said purpose or do you require Authentication documents such as, Clearance certificate, non-conviction certificate, or birth certificate? If so Please specify the documents you require.*

Please see the TRA's response to Question 21 above.

#### **ITT: Section 2.10**

23. *In relation to section 2.10.3(a) and 2.10.5 of the ITT, please confirm that the amount of the 1<sup>st</sup> Guarantee is fixed at BD 28,000.*

Section 2.10 of the ITT states that the value of the first bank guarantee should be equal to the first year's Spectrum Fee. The value of the Spectrum Fee for 2007 has been set by the Ministry of Transportation at BD 28,000. Therefore, the amount of the 1<sup>st</sup> bank guarantee should be BD 28,000.

24. *Please confirm that, in section 2.10.3 of the ITT and in Form G in Annex 4 to the ITT, November 28, 2006 represents the current deadline for receipt of Bids and that, if this date is amended by*

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*the TRA pursuant to section 1.4.1 or 1.6.1 of the ITT, the date of November 28, 2006 should be changed accordingly.*

The date November 28, 2006 that is stated in section 2.10.3 of the ITT and in Form G in Annex 4 reflects the current deadline for receipt of Bids. However, if the Bid Submission Date is changed pursuant to sections 1.4.1 or 1.6.1 of the ITT, the date in section 2.10.3 of the ITT and in Form G in Annex 4 will not change.

The TRA has adopted this approach as it may not be practical for Bidders to change the dates of their Bank Guarantees should the Bid Submission Date change.

25. *As per clause 2.10.3, the bank guarantee shall be from a bank registered with the Bahrain Monetary Agency. Kindly advise on the banks in **[Confidential: country]** that are registered with the Bahrain Monetary Agency. Can the bank guarantee be furnished from an international bank having office in **Confidential: country**?*

The bank guarantees referred to in section 2.10.3 of the ITT may be from foreign banks that are registered with the Bahrain Monetary Agency (now called the Central Bank of Bahrain, or "CBB"). The bank does not need to be based in Bahrain, provided that it has a branch office in Bahrain which would honor the bank guarantee.

The TRA does not have a list of foreign banks that are registered with the CBB. Parties are invited to contact the CBB, whose website is <http://www.cbb.gov.bh/cmsrule/bmaindex.jsp>, for further information.

26. *The ITT states (Section 2.10) that the financial bid should include 2 bank guarantees for 50% of the bid value each. **[Confidential: Party's name]** is concerned that this process might expose the bid price to the personnel of the bank issuing the bank guarantee. Can the bidder issue bank guarantees that are higher in value than 50% of the bid value in order to conceal its bid price? Can the TRA suggest mechanisms by which the leakage of the bid price can be prevented?*

The TRA would accept bank guarantees that are higher than the amounts required under section 2.10.3 of the ITT provided that there is no restriction on the TRA to only draw upon that proportion of each of the second and third bank guarantees that equals 50% of the Bid Price.

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Bearing in mind Bidders' obligations under section 2.11.2 of the ITT, Bidders should be responsible for ensuring that they procure the appropriate assurances from their banks to ensure that the value of their Financial Bids is not leaked.

#### ITT: Section 2.11

27. *Please advise exactly where in the ITT the Auctions Rules are set out (eg in which sections).*

Subject to the rules on construction of the ITT that are set out in section 1.5 of the ITT and the rules on amendment in section 1.6 of the ITT, the Auction Rules are those rules set out in the ITT, i.e. the ITT itself, including annexes. Bidders are expected to comply with all of the rules in the ITT.

28. *In relation to sections 2.11.2 and 2.11.4(b) of the ITT, please confirm that, as a matter of Bahrain law, the Bidder can not be held liable for the conduct of Associates, Sister Companies and any of its or their directors or employees which is beyond the reasonable control of the Bidder.*

The TRA is not authorized to give legal advice. It is suggested that interested parties seek independent legal advice on this issue.

29. *In relation to sections 2.11.2(e) of the ITT, please confirm that the Bidder may disclose Confidential Information to its agents and advisors (eg legal advisors) assisting the Bidder with the preparation of the Bid.*

Without limiting the restrictions on Bidders regarding collusion or distorting the auction process (whether directly or indirectly), the TRA would not object to the Bidder disclosing Confidential Information to its agents and advisors to the extent necessary to assist the Bidder with the preparation of the Bid, provided that those agents and advisors are bound by non-disclosure rules that are no less onerous than those in the auction rules. The TRA will issue a revised ITT amending section 2.11.2(e) appropriately.

30. *In relation to section 2.11.4(c) of the ITT, if the TRA proposes to disqualify a Bidder because the Bidder has a material interest in an Opposing Party, can the Opposing Party elect to be disqualified instead of the Bidder?*



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The TRA considers that it is the responsibility of each Bidder to conduct the appropriate due diligence to ensure that it would not be in breach of section 2.11.4(c) of the ITT.

If there is a breach of section 2.11.4(c), the TRA may *at its sole discretion* permit a Bidder to make arrangements to divest itself of a Material Interest or exempt that Bidder under section 2.11.5. The TRA will have regard to the principles set out in section 2.11.6 in determining whether to grant such an exemption.

Thus, although the TRA may grant an exemption to disqualification under section 2.11.4(c) if the Opposing Party elects to withdraw its Bid, the TRA cannot confirm that it will take such action without full consideration of the facts relevant to the breach of section 2.11.4(c).

31. *Are there any circumstances the TRA can foresee in which, in the event that Batelco **[Please note, this question was asked by a third party]** or a company in which Batelco has a Material Interest is a Bidder (Batelco Bidder) the Batelco Bidder may be granted an exemption permitting it to have a Material Interest in an Opposing Party pursuant to sections 2.11.5 and 2.11.6 of the ITT? If yes, please give examples. If not, please clarify and confirm that there are no circumstances that the TRA can foresee under which a Batelco Bidder will be granted an exemption by the TRA permitting it to have a Material Interest in an Opposing Party.*

The TRA has not considered this hypothetical issue and, as such, it would be inappropriate for the TRA to answer this question.

In determining whether an exemption under section 2.11.5 of the ITT will be granted, the TRA will act in a non-discriminatory manner, as stipulated in section 3 of the Telecommunications Law, and will refer to the criteria set out in section 2.11.6.

#### **ITT: Section 2.12**

32. *Will Bidders who have been deemed by the TRA to have failed to comply with the Qualification Criteria be informed of this decision prior to referral of the decision to the Panel for review pursuant to section 2.12.3 of the ITT, and will they be given any opportunity to make submissions or provide any other form of information about this to the TRA or to the Panel?*

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It is the responsibility of Bidders to ensure that their Qualification Documentation complies with the Auction Rules and meets the Qualification Criteria at the time of submission. Although the TRA may request clarification of Qualification Documentation from Bidders pursuant to section 2.12.1 of the ITT, any submissions that are not in response to such requests for clarification will be considered to be late submissions and therefore not considered. Please note that the TRA has no obligation to seek clarification from Bidders and may reach its conclusions on compliance with Qualification Criteria solely on the basis of initial Bid submissions.

If the TRA is of the view that a Bid does not meet the Qualification Criteria, it will provide its reasons to the Panel. The Panel will then be asked to consider whether the TRA's assessment was appropriate.

It is not anticipated that a Bidder will be informed of a referral to the Panel as neither the TRA's initial assessment nor the Panel's opinion will constitute a decision of the TRA.

A decision that a Bid does not meet the Qualification Criteria would only be made by the General Director after reviewing the Panel's opinion. Any Bidder whose Bid does not meet the Qualification Criteria will be informed of such at this stage pursuant to section 2.12.7 of the ITT.

33. *[Confidential: Party's name] hereby assumes that, in accordance with Article (9) of the Telecommunications law, the disqualified Bidder upon the final decision of the General Director has the right to appeal the mentioned decision to the Board of Directors.*

*[Confidential: Party's name] hereby enquires weather TRA has a set of procedures and time table in such a case. In all matters [Confidential: Party's name] find that it is important that the procedures and the time table, for appealing the said decision to the Board of Directors, be clarified.*

In accordance with section 9 of the Telecommunications Law, the General Director shall exercise the powers of the TRA subject to the supervision of the Board.

Pursuant to section 2.12.2 of the ITT, the TRA has appointed a panel of independent experts to review any instances where a Bidder is deemed to have failed to meet the Qualification Criteria. As stated in section 2.12.3 of the ITT, if the General

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Director does not accept the advice of the panel of experts, he will make this known to the Bidder.

The above procedure neither adds to nor detracts from any appeals procedure available to parties under the Telecommunications Law or any other laws of the Kingdom of Bahrain. The TRA has not established any appeal process specific to a notification from the TRA under section 2.12.7 of the ITT.

As stated in section 1.8 of the ITT, the ITT is governed by the laws of the Kingdom of Bahrain. Concerned parties are advised to seek independent legal advice on challenging decisions of regulatory bodies in the Kingdom of Bahrain.

34. *Will the list of Bidders referred to in section 2.12.4 of the ITT make it clear which Bidders have been finally determined (following the process set out in section 2.12.3 of the ITT) to comply with the Qualification Criteria and which Bidders have been determined to fail to so comply?*

The list of Bidders and Associates of Bidders referred to in section 2.12.4 of the ITT, will be published as soon as is reasonably practicable after the Bid Submission Date, for the purpose of assisting Bidders to make the appropriate declaration under section 2.12.5. This list will not be a list of Qualified Bidders. Bidders shall be notified individually whether or not they are Qualified Bidders pursuant to sections 2.12.6 and 2.12.7.

35. *In relation to section 2.12.5 of the ITT and generally, please advise whether, given the general change of weekend in the Kingdom of Bahrain from Thursday and Friday to Friday and Saturday as from 1 September 2006, the definition of "Working Day" should now read "A day (other than a Friday or Saturday) on which..."*

As suggested, the definition of "Working Day" should be amended to reflect the general change of weekend in the Kingdom of Bahrain.

The definition of "Working Day" in Annex 1 to the ITT shall be deleted and replaced with the following:

*"A day (other than a Friday or Saturday) on which the clearing banks in Manama are open for general business."*

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36. *Please advise what form the Bidder's declaration referred to in section 2.12.5 should take.*

The wording of each Bidder's declaration under section 2.12.5 will depend on whether or not that Bidder has a Material Interest in any Opposing Party. If the Bidder does have a Material Interest in an Opposing Party, the nature of that Material Interest should be expressly disclosed.

The TRA shall in due course publish the possible forms of declaration under section 2.12.5 of the ITT. Interested parties should note that this published declaration shall not in any way change the requirements under section 2.12.5.

#### **ITT: Section 2.15**

37. *If the license is awarded on 13 December 2006, it is likely that there will only be 14 actual working days (given the current Friday/Saturday weekend in Bahrain, and the holidays for National Day, Arafat Day and Eid Al-Adha) in the ensuing 24 calendar days. [Confidential: Party's name] is concerned that, in the normal course and assuming all necessary assistance and information requested is provided without delay by the incorporating party, it can often still take longer than this to obtain all relevant Ministry approvals to form a company with telecommunications licensee objects in Bahrain. [Confidential: Party's name] therefore requests that this time period be extended to a minimum of 30 working days.*

The TRA proposes to shortly amend section 2.15.3 of the ITT to enable the TRA to extend the deadline in this section at its absolute discretion.

This amendment does not detract from the responsibility of Bidders to take all reasonable steps to attempt to incorporate the Prospective Licensee within 24 calendar days of award should they be declared a Successful Bidder.

38. *[Confidential: Party's name] also requests that section 2.15.4 of the ITT be amended to permit the TRA to agree to a longer period for incorporation in the event that circumstances are such as to make this reasonable. For example, the amended section might read: "If in the opinion of the TRA: (a) The First Successful Bidder cannot complete all necessary actions within the time specified in Clause 2.15.3 or any longer period as may be agreed to by the TRA in its absolute discretion or refuses to.....", with the same amendments to be made in relation to the Second*

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*Successful Bidder in (b). Consistent with the requested extended time permitted for incorporation, the deadline of February 22, 2007 in section 2.15.6 of the ITT should also be extended. If these amendments are not made, given the very harsh penalty for non-compliance with the time frame in section 2.15.3 of the ITT as the ITT is currently drafted, [Confidential: Party's name] considers that Bidders will have no choice but to incorporate a Bahraini company (without telecommunications licensee objects, which [Confidential: Party's name] understands will only be approved once a license has been granted) in advance of knowing whether or not they are a Successful Bidder. As [Confidential: Party's name] understood from the TRA's Information Memorandum that this was not the TRA's intent, [Confidential: Party's name] would appreciate the TRA's views on this matter.*

Please see the TRA's response to Question 37 above.

#### ITT Annex 1 – Definitions

39. *In relation to the definition of "Auction Rules", please advise exactly where in the ITT the Auction Rules are set out (eg in which section(s)).*

Please see the TRA's response to Question 27 above.

40. *In relation to the definition of "Working Day" please advise whether, given the general change of weekend in the Kingdom of Bahrain from Thursday and Friday to Friday and Saturday as from 1 September 2006, the definition of "Working Day" should now read "A day (other than a Friday or Saturday) on which..."*

Please see the TRA's response to Question 35 above.

#### ITT Annex 2 – NFWS License: Section 2

41. *For the avoidance of doubt [Confidential: Party's name] would request the TRA to define the term broadcast service.*

"Broadcasting" has the meaning stated in the Telecommunications Law. Whilst only the Arabic text of the Telecommunications Law is definitive, the English translation of the law published on the TRA's website states that "Broadcasting" means:

*"any cable, radio or satellite communication, transmissions of which are intended for direct general reception by the public but excludes Video on Demand".*

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42. *Definition of "broadcasting" (services licence) please can the TRA provide further details of what services are permitted and which services are not, bearing in mind the current definition of broadcasting under the Telecommunications Law.*

Holders of NFWS licenses will be entitled to provide those services specified in section 3 of the NFWS license. These services specifically exclude "broadcasting" services. "Broadcasting" has the meaning stated in the Telecommunications Law.

Whilst the TRA is able to comment on proposed services that are specifically and sufficiently described by interested parties, the TRA is not able to provide a general list of services that would be permitted under the NFWS license. Interested parties are advised to seek independent legal advice on the interpretation of the Telecommunications Law in this regard.

43. *In section 2, in relation to the definition of "Basic data service", please explain what a "service involving broadcasting" is. In particular, which data content services are permissible? For example, can the licensee provide streaming audiovisual content and/or audiovisual content which can be downloaded and subsequently viewed by the subscriber?*

With regard to the definition of "broadcasting", the TRA refers to its responses to Question 41 above. Therefore, audio-visual content that is downloaded or streamed upon request by the user may be permissible.

Interested parties should, however, seek independent legal advice regarding the national laws of the Kingdom of Bahrain, including those laws specific to broadcasting.

44. *The types of service, which can be provided, are not very clear. For example if data is allowed why separate license for Internet service? In other words are following services permitted in the license?*

- i. POTS – Local*
- ii. POTS – International*
- iii. Broadband Internet*
- iv. Video services*

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- v. IPTV
- vi. Unified messaging
- vii. Value added services like location based services, ring tones, ring back tones
- viii. Broadcasting services like news, events, etc.
- ix. Leased Line
- x. VPN

The NFWS licensees must ensure that they have the appropriate telecommunications licenses before offering any services such as value added services (calling cards, video conferences) or international services. An ISP license is required by parties wishing to act as an Internet Service Provider. Please refer to the TRA's website for a full list of the telecommunications licenses currently available.

Further, interested parties should seek independent legal advice regarding the regulatory requirements for the provision of broadcasting services, which under the Telecommunications Law, falls outside of the definition of telecommunications. The obligations of the Prospective Licensee are to comply with the laws of the Kingdom of Bahrain, including those laws specific to broadcasting.

45. *In section 2, does the definition of "Call" include communications which convey only data or only voice?*

Yes, "Call" may include communications which convey voice or data or voice and data.

However Potential Licensees are specifically reminded of sections 5 to 7 of the draft NFWS License.

46. *Referring to the definition of a "call" (draft service license document, page 2), is a data session using packet switching technology (e.g., user using a web browser to consult a website) considered a call?*

The TRA takes a technology neutral approach to the provision of national fixed wireless services, and as such the means of connecting is not considered; only the action and the result. As such, the TRA is of the view that based upon the information

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provided to it, the described system would fall within the definition of a call in the draft NFWS License.

47. *For avoidance of doubt [Confidential: Party's name] wants to know whether [subsection (e) of the definition of "Call"] includes services like:*
- a Point to Point and Multipoint Video Conferencing Services*
  - b Point to Point and Multipoint Video Surveillance Services*
  - c MMS & Video Content, Streaming Video Transmission Services*
  - d Video on Demand an Pay per View services*
  - e Subscription based IP TV services*
  - f Any other fixed wireless video service containing video content*

All of the above may be classed as calls, to the extent that they are not broadcasting services. The definition of broadcasting is as in the Telecommunications Law. Interested parties are advised to seek independent legal advice to ensure that they comply with the laws of the Kingdom of Bahrain, including the laws those specific to broadcasting.

48. *Definition of "Licensed Area" – can the TRA confirm that if private landowners (eg Amwaj Island) refuse access on reasonable terms, that this is discounted from the stipulated coverage requirements.*

The NFWS License is a national license. Under section 4.3 of the draft NFWS License, any potential subscriber within the Kingdom of Bahrain will be able to request offered services from the licensee, subject to the licensee having an objective reason for not being in a position to offer the Requested Services to that person.

The TRA will consider this when considering whether the NFWS Licensee has met its obligations under section 4.1 of the draft NFWS License.

49. *Referring to the definition of "mobile telecommunications service" (draft service license document, page 4), can you confirm that a data session using packet switching technology (e.g., user using*



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*a web browser to consult a website) that is suspended for a short period of time (e.g., 500 ms) when crossing a cell boundary, sufficient to cause a call to drop if it were a voice service, is not considered a mobile telecommunications service?*

The NFWS license is to provide services through a national fixed network. The TRA takes a technology neutral approach regarding the provision of national fixed wireless services, and as such the means of connecting is not considered; only the action and the result.

In light of this, the above scenario would be considered a mobile telecommunications service as there would be a handover process when crossing a cell boundary.

50. *In section 2, the definition of "Nomadic wireless services" has been changed from the definition in the draft license which was included in the TRA's Information Memorandum. Please explain the reason for the change.*

This amendment was made in response to comments from interested parties to the draft NFWS license that was published as Annex 2 to the Information Memorandum.

The TRA is of the view that the revised definition more accurately reflects the TRA's policy as stated in section 9.2 of the Joint Policy issued by the TRA and the Ministry of Transportation of the Kingdom of Bahrain on 27 June 2006 (the "Spectrum Policy and Planning document").

51. *Definition of "nomadic services" (services licence) please can the TRA confirm that it is intended that at least one part of the customer premises equipment comprises a fixed termination point.*

Yes. The TRA intends that at least one part of the customer premises equipment comprises of a fixed termination point.

52. *Does nomadic mobility allowed for laptop users? According to the Spectrum Policy document this is allowed.*

Nomadic wireless services are permitted under section 3.1 of the draft NFWS License.

53. *Please confirm that the definition of "Force Majeure" in section 2 would include an electrical outage which was beyond the reasonable control of the licensee.*

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The TRA confirms that, as stated in the NFWS License, force majeure means “*any event beyond the reasonable control of the licensee*”.

Please see further the TRA's response to Question 54 below.

54. *Definition of “force majeure” (services license) – please can the TRA confirm that power outages in principle are considered to be outside the reasonable control of a licensee.*

The TRA cannot confirm that power outages will necessarily be events of force majeure. As defined in the NFWS license, force majeure only includes events outside the reasonable control of the licensee.

Further, interested parties' attention is drawn to section 27.2 of the draft NFWS license, which states that licensees will not be liable for non-performance of their obligations, “*if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this license or other reasonable precautions*”.

#### ITT Annex 2 – NFWS License: Section 3

55. *Enforcement of condition 3 of the services licence (nomadic services) – How will the TRA ensure that quasi-mobile use is in practice not comprised in these services when this may be outside the control of the service provider. Is user activity considered by the TRA to be an objective justification against potential enforcement action.*

As expressly stated in section 3.3 of the draft NFWS License, the licensee may not “*use or intentionally allow the use of any of its national fixed wireless network for the provision of any mobile telecommunications service*”. Therefore, whilst there is no obligation on licensees to monitor use of their national fixed wireless networks, licensees would not be permitted to ignore any misuse of their networks of which they are aware.

Further, please note that the TRA may investigate and act against material breaches of the Telecommunications Law or License conditions under, *inter alia*, section 53 of the Telecommunications Law and section 3.5 of the draft NFWS License.

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56. *[Confidential: Party's name] would like to ask whether this restriction [at sections 3.3 and 3.4] includes the Wireless backhaul services for GSM base stations.*

Licensees are not permitted to use or allow the use of FWA spectrum granted under the draft Frequency License for the provision of a mobile telecommunications service as defined in the draft NFWS License. However, to the extent that backhaul or other conveyance services are provided to other operators on a standalone basis, there is nothing to prevent licensees offering these services on a commercial basis.

57. *Please can the TRA provide reasons why approval is now required for delegation or sub-contracting of the use of frequencies or services to affiliates when only notification is required under other services and frequency licenses (including mobile licenses).*

The TRA has amended section 3.7 of the draft NFWS License to enable licensees to provide licensed services through a wholly owned subsidiary, provided that the TRA is notified of such arrangement.

#### ITT Annex 2 – NFWS License: Section 4

58. *(a) Is an NFWS licensee/operator required to offer both voice and data services?*

Subject to section 4.3 of the NFWS license, the licensee must provide those services specified in section 3.1 of the NFWS license. An objective justification under section 4.3 may be, for example, that the licensee does not provide the requested services to any of its customers.

Interested parties should note, however, that section 4.3 of the NFWS license would not limit a licensee's obligation to those services specified in sections 5 – 7 of the NFWS license.

*(b) If an NFWS licensee/operator is required to offer both voice and data services, must such services be launched simultaneously, or may they be launched separately at different times?*

Please see the TRA's response to Question 58(a) above.

*(c) If an NFWS licensee/operator launches only a voice or data service to fixed wireless subscribers on a commercial (non-trial)*

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*basis, does the launch of such service qualify as the Commercial launch date?*

Yes, the first date on which the licensee offers licensed services to its fixed wireless subscribers on a commercial basis is the commercial launch date, regardless of which licensed services are launched.

*(d) May an NFWS licensee/operator wait to offer voice services until after tariff rebalancing in the Kingdom is implemented?*

Licensees must comply with the requirements of sections 5 – 7 of the NFWS license from no later than the time that they connect end users to their national fixed wireless network and in no event later than the date in section 4.2 of the draft NFWS License.

59. *The Draft Service License states that the licensee is authorized to provide:*

- *National fixed telecommunications service*
- *Nomadic wireless services*
- *Telegraph services*
- *Telex services*

*We see the first two services in the list above as primary services for the licensee. However, is the licensee obliged to provide all the above 4 services.*

Under section 4.3 of the draft NFWS license, a licensee would only be obliged to provide those services that are “offered on a commercial basis”. Therefore, there would be no obligation for a licensee to provide telegraph or telex services, provided that these are not offered to other subscribers on a commercial basis.

Please note that the above is without prejudice to licensees' other License obligations (including, *inter alia*, sections 5 – 7 of the draft NFWS License) and potential obligations under the Telecommunications Law, e.g. section 64.

60. *In sections 4.1(a) to (c), please explain what "population coverage" means. Does it, consistent with section 3.9 of the TRA's Information Memorandum, mean radio coverage?*

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The TRA assumes that the reference to sections 4.1(a) to (c) of the draft NFWS License should be a reference to the table in section 4.5.

“Population coverage” should be interpreted in accordance with the preceding provisions of the draft NFWS license; as per licensees’ obligations under sections 4.1 to 4.3 of the draft NFWS License, licensees should have a network infrastructure in place that would enable them to provision the requested services to any requesting consumer in accordance with the thresholds stated in section 4.1.

61. *Referring to the coverage requirements (draft service license document page 8, 4.1), what is the definition of "radio coverage"?*

“Radio coverage” is not defined in the draft NFWS License. Interested parties should note that the obligation in section 4.1 of the draft NFWS License requires licensees to ensure that they provide sufficient signal strength to enable the provision of requested services as in section 4.3 of the draft NFWS License.

62. *Does coverage availability mean that users will have enough signal strength to use voice or data at, for example, 128 kbps? Does coverage also require users to be able to use services indoors?*

Please see the TRA's response to Question 61 above. Bearing in mind a Licensee's obligation to provide services under section 4.3 of the draft NFWS License, the data rate that licensees choose to offer subscribers is a commercial decision. The TRA has taken a technology neutral approach in relation to the draft NFWS License and therefore cannot comment upon required signal strengths for specific services in specific areas.

63. *The obligation in section 4.3 does not seem to appear in any other fixed, mobile, ISP or VAS license in Bahrain. Please explain why the TRA considers that it is necessary to include this obligation in the NFWS license. Further, please explain why it is considered necessary for this obligation to apply to all NFWS licensees, and not just those who are dominant.*

As stated in sections 3.9 and 3.10 of the Information Memorandum, the TRA intends to promote competition in national fixed telecommunications services through the auction of the national fixed wireless services licenses.

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As spectrum is a limited resource, it is necessary to include this "use or lose" obligation in the NFWS license to ensure that spectrum is not hoarded by a Successful Bidder.

64. *Why does the TRA believe that it is appropriate to impose compulsory subscriber connection obligation on start-up companies when it does seem to impose the same requirement in Batelco's national fixed or mobile licenses?*

Please see the TRA's response to Question 63 above.

65. *Roll-out (services licence) – please can the TRA confirm that penalties stated at condition 4.5 are in place of suitable fines and that if in material breach, licensees will not be subject to "double jeopardy".*

As stated in section 4.5 of the draft NFWS license, the penalties listed in the table do not limit the TRA's ability to take further or ancillary action pursuant to section 35 of the Telecommunications Law. This may enable the TRA to impose greater fines than those stipulated in section 4.5 of the draft NFWS license, provided that such fines are objectively justified and non-discriminatory.

#### ITT Annex 2 – NFWS License: Section 5

66. *In relation to section 5, does the licensee have to provide a public emergency call service to its data only customers (ie those to whom the licensee does not provide voice services)?*

As stated in section 5 of the NFWS license, the licensee must ensure that all end-users connected to its national fixed wireless network shall have access to public emergency call services via that network.

The TRA is of the view that the provision of emergency call services is essential if licensees are to provide subscribers with a viable national telecommunications network. As such, emergency call services must be provided to all users connected to a licensee's fixed wireless network.

67. *(a) Must an NFWS licensee/operator provide public emergency call services if it is not offering voice services?*

Please see the TRA's response to Question 66 above.

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*(b) Must an NFWS licensee/operator provide public emergency call services during electricity outages?*

Pursuant to section 5 of the NFWS license, licensees are expected to provide emergency call services to end-users. There are various exceptions to this, such as the force majeure provisions in section 27.

As stated in the NFWS License, force majeure means “*any event beyond the reasonable control of the licensee*”. The TRA directs interested parties to see its response to Question 54 above.

Licensees will therefore be expected to take all reasonable steps to ensure that the individual components of its network, such as the customer premises equipment, have a suitable source (or alternative source) of power.

68. *Will operators in both licensed and unlicensed spectrum carrying voice services be required to provide location based emergency service location identification?*

Please see the TRA's response to Question 66 above and Question 139 below. The TRA is of the view that emergency call services from fixed locations should provide location service identification.

#### **ITT Annex 2 – NFWS License: Section 6**

69. *In relation to section 6:*

69.1 *Please advise exactly what "directory information" and "directory information services" the licensee is required to provide. For example, is it only names and telephone numbers that need to be provided, and is the obligation limited to information about the licensee's own customers or does it extend to information about other licensees' customers, and if so which ones?*

Subject to section 6 of the Draft NFWS License, any relevant regulations issued by the TRA and any other applicable laws of the Kingdom of Bahrain existing or which may come into effect, the TRA considers that at a minimum a NFWS Licensee's subscriber's number must be provided by the Licensee's directory information services.

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69.2 *Does the licensee have to provide directory information services to its data only customers (ie those to whom the licensee does not provide voice services)?*

As stated in section 6 of the NFWS license, the licensee must provide directory information services upon request to its fixed wireless subscribers. Therefore, this obligation extends to "data only" customers.

69.3 *Does the obligation in section 6.2 apply to requests from any licensed operator, or only to requests from other fixed wireless operators? If the obligation applies to requests from any licensed operator, why is the undertaking in section 6.2(b) limited to the operator's fixed wireless subscribers?*

The obligation in section 6.2 of the draft NFWS license applies to requests from any licensed operator. The TRA will amend section 6.2(b) of the draft NFWS License to make it clear that the undertaking applies in respect of all of the requesting operator's subscribers.

69.4 *Please explain what "non-discriminatory terms" means in the context of section 6.2. For example, would it prevent the licensee from giving better terms to an operator with whom it had a reciprocal directory information sharing arrangement than those given to an operator with whom there was no such arrangement?*

It is not possible for the TRA to conclusively state whether an action would be discriminatory without having regard to all of the relevant facts. Interested parties are advised to seek independent legal advice on the meaning of "non-discriminatory".

#### ITT Annex 2 – NFWS License: Section 7

70. *In relation to section 7:*

70.1 *Does the licensee have to provide operator assistance services to its data only customers (ie those to whom the licensee does not provide voice services)?*

As stated in section 7 of the NFWS license, the licensee must provide operator assistance services upon request to its fixed wireless subscribers. Therefore, this obligation extends to "data only" customers.



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70.2 *Does the licensee have to provide operator assistance services which connect its customers to all other fixed, fixed wireless and mobile customers in Bahrain, or only to other fixed wireless customers?*

The TRA shall amend the definition of “operator assistance services” in section 2.1 of the draft NFWS License to limit the obligation on licensees to connecting subscribers to another person connected to a telecommunications network in the Kingdom of Bahrain which is capable of providing basic voice services.

Therefore licensees should provide operator assistance services to connect customers to all other fixed, fixed wireless and mobile customers in Bahrain.

#### ITT Annex 2 – NFWS License: Section 8

71. *Regarding the code of practice on subscriber affairs, Is there any restriction on having some of the customer care operations (e.g. call center) performed from a location outside Bahrain?*

Subject to the Prospective Licensee complying with section 26(a)(2) of the Telecommunications Law, in principle the TRA has no objection to some of the customer care operations being performed outside of Bahrain.

#### ITT Annex 2 – NFWS License: Section 9

72. *In relation to section 9.1, what kinds of regulations might be issued by the TRA in relation to quality of service? Are there any such regulation currently under contemplation by the TRA? If yes, what are they?*

Quality of service has been the subject of consultation by the TRA, and the TRA is in a position to publish a regulation if considered necessary. The TRA is of the opinion that at present market forces could maintain a satisfactory quality of service for consumers without a specific regulation. The TRA will review this requirement from time to time.

73. *For the Call Completion rate calculation how are the following accounted for:*

- i. Unanswered calls*
- ii. Busy called party*

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#### iii. Voluntary switched-off FWA terminals

Unanswered calls and busy party calls will be classed as completed calls.

Calls to voluntarily switched-off terminals will be classed as completed calls but, in cases of dispute, evidence may be required to demonstrate that the equipment was switched off.

#### ITT Annex 2 – NFWS License: Section 10

74. *In relation to section 10.1, in what circumstances does the TRA anticipate that it will give its prior approval to an interruption or suspension of the operation of the national fixed wireless network to be caused by a negligent act or omission of the licensee? ([Confidential: Party's name] suggests that, consistent with the wording in other fixed licenses in Bahrain, the words "nor through any negligent act or omission" should be deleted from this section).*

This clause of the draft NFWS License has been amended and shall be republished to clarify that no prior approval shall be given for an interruption caused by a negligent act or omission.

The TRA considers it to be to the benefit of consumers that interruptions to the operation of a licensee's network resulting from negligent acts or omissions are not permitted under the NFWS License.

#### ITT Annex 2 – NFWS License: Section 11

75. *Is there any regulation on pricing? The Information Memorandum mentions price caps for players with significant market share.*

Section 5.6 of the Information Memorandum describes tariff controls that may be applicable to licensed operators with significant market power.

The TRA's powers to regulate retail prices are set out in section 58 of the Telecommunications Law and section 11 of the draft NFWS License.

76. *Retail tariffs for licensed services (condition 11 services license) – please can the TRA explain why it is mixing concepts of significant market power and dominance. Why does one set of rules apply to two different levels of market power?*

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The concepts of “an operator with significant market power” and “dominant position” are defined as separate concepts in Determination 2 of 2003, Methodology for Determining Dominance and Significant Market Power. The TRA does not consider that referring to these two standards of market power constitutes “mixing” those standards.

77. *The obligation in section 11.3 does not seem to appear in any other fixed, mobile, ISP or VAS license in Bahrain. Please explain why the TRA considers that it is necessary to include this obligation in the NFWS license. Further, please explain why it is considered necessary for this obligation to apply to all NFWS licensees, and not just those who are dominant.*

Particularly with regard to section 4.3 of the draft NFWS License, the TRA is of the view that it would be beneficial to consumers for licensees to be transparent about the services and tariffs for those services.

#### ITT Annex 2 – NFWS License: Section 12

78. *Regarding interconnection or access agreements with other licensed operators in Bahrain, how will the TRA make sure that the NFWS licensee can interconnect to or access these networks at a fair cost, and under fair conditions (e.g. point or level of access technically feasible)?*

Under section 57 of the Telecommunications Law, dominant operators are required to publish a Reference Access Offer and Reference Interconnection Offer, which are approved by the TRA. The offers govern charges for interconnection and access to the networks of any dominant operators.

For further information, please see section 5.7.3 of the Information Memorandum.

79. *Referring to the draft service license document, page 17, 12.1, what are the criteria for considering a licensee to have a dominant position?*

The TRA refers interested parties to Determination 1 of 2003, Methodology for the Definition of Telecommunications Markets, and Determination 2 of 2003, Methodology for Determining Market Power.

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### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

#### ITT Annex 2 – NFWS License: Section 13

80. *Referring to draft service license document, page 19, 13.1, can you confirm that this provisions is only valid for licensees with a dominant position?*

Section 13.1 of the NFWS License has been amended to limit its application to dominant operators. The amended license shall be published with the amended ITT shortly.

81. *In relation to section 13:*

- 81.1 *Please advise whether another licensed operator would be able to provide the resale services referred to in this section without itself possessing a NFWS license. If yes, what type of license would it require?*

The licensed operator would not necessarily need an NFWS License. The TRA refers to the definition of “Resale Services” in the draft NFWS License, particularly the reference to “...another licensed operator (which for the avoidance of doubt can be the holder of any other license issued by the Regulator)...”. Please refer to the TRA’s website for details of existing licenses currently available.

- 81.2 *Please explain why it is considered necessary for this obligation to apply to all NFWS licensees, and not just those who are dominant (as appears to be the case in standard fixed licenses in Bahrain).*

Please see the TRA’s response to Question 80 above.

82. *It is understood that the NFWA licensee has an obligation to resell traffic to other parties, what will be the specific criteria or guidelines used by the regulator to approve or disapprove the tariffs proposed by the NFWA licensee to a licensed operator that would request the provision of services for resale?*

Please see the TRA’s response to Question 80 above. Further, any charges would depend on a number of circumstances (description of services requested, type of license(s) held, etc.) that cannot be determined *a priori*.

#### ITT Annex 2 – NFWS License: Section 15

83. *Regarding section 15.3, “the licensee shall for the purposes of this license retain all records for at least two (2) years from the*

## TRA's response to questions on the

### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

*date on which they came into being”, does that imply in case of voice services that the licensee shall keep track of all individual calls of a subscriber for at least two years? What exactly shall the licensee keep record of?*

Yes. Further, the licensee shall be required to keep those records that demonstrate that the licensee complies with the billing process established under section 15.2 of the NFWS license.

84. *Regarding the billing of services, in the case of flat-fee and unlimited offers, what are the obligations of the licensee regarding the record of traffic and usage details of individual subscribers?*

Please see the TRA's response to Question 83 above.

#### **ITT Annex 2 – NFWS License: Section 16**

85. *Does section 16.8 apply to the licensee's data only subscribers (ie those to whom the licensee does not provide voice services)?*

This obligation will apply in respect of any subscriber to whom the Licensee has assigned a number.

86. *Will successful bidders be granted a complete unique numbering system?*

Under the National Numbering Plan, licensed operators may apply for and be granted numbers. The National Numbering Plan for Bahrain is applicable to all licensed operators wishing to make use of the National Numbering Pool and its processes and strictures are mandatory on all such operators.

The National Numbering Plan is available on the TRA's website.

#### **ITT Annex 2 – NFWS License: Section 17**

87. *Please explain why it is considered necessary, in section 17 of the NFWS license, to impose potential restrictions on the ability of the licensee to share facilities with other licensed operators?*

The TRA considers section 17 to provide a mechanism by which parties would be authorized to share facilities, having had regard to considerations under section 21 of the Telecommunications License.

## TRA's response to questions on the

### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

88. *Is sharing of infrastructure mandatory?*

Pursuant to section 57(e) of the Telecommunications Law, a licensed operator in a dominant position shall offer access to its telecommunications network and telecommunications facilities on fair and reasonable terms to any licensed operator. Subject to the rules under section 57 and 65 of the Telecommunications Law, there is no obligation on licensees to share infrastructure.

89. *For avoidance of doubt [Confidential: Party's name] wants to know whether this [conditional authorization at section 17.2] includes sharing Radio Communications Station (Base Station) of licensed GSM Operator.*

The TRA notes that the language of section 17.2 does not prohibit an NFWS Licensee sharing the installation and operation of a radiocommunications station with a licensed mobile operator. Agreements made under section 17.2 will be always subject to the TRA's written approval.

90. *Will the TRA make mandatory to incumbents (Batelco, MTC) to provide the NFWA licensee access to their masts? If yes, how will the TRA make sure that the NFWA gets access to these masts at a fair cost, and more generally under fair conditions (e.g. reasonable delay to provide access to a specific mast)?*

Please see the TRA's response to Question 88 above. The TRA cannot comment upon this specific question without conducting an appropriate market review. Furthermore, the TRA refers Potential Bidders to the TRA's answer to question 13(a) of this document.

#### ITT Annex 2 – NFWS License: Section 19

91. *(a) Do the interoperability requirements in Section 19.1 of the draft NFWS license and Section 5.1 of the draft spectrum license require the interoperability of customer premises equipment ("CPE"), i.e., could a consumer cancel a subscription with on operator, switch to the other operator, and use the same CPE, or is this simply a requirement for interconnections that allow different networks to communicate?*

The requirement in Section 19.1 of the ITT refers to the requirement for interconnections that allow different networks to interoperate. There is no requirement for CPE to interoperate directly with the air interface protocols and infrastructure of other NFWS licensed operators.

## TRA's response to questions on the

### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

#### ITT Annex 2 – NFWS License: Section 20

92. *Please provide further details of the technical security requirements stipulated under condition 20.4 of the services license.*

Under section 20.4 of the draft NFWS License, licensees must take all reasonable steps to prevent the unlawful access to or interruption of any information carried across any part of the licensed network. As the TRA takes a technology-neutral approach, the method of any authentication and/or encryption process should be determined by the licensee.

93. *With respect of the 3.5 GHz will the operator be required to provide legal intercept services?*

Interested parties are directed to section 20.3 of the draft NFWS License and sections 78 and 79 of the Telecommunications Law for further information on legal intercept obligations.

#### ITT Annex 2 – NFWS License: Section 22

94. *In relation to section 22:*

9494.1 **[Confidential: Party's name]** *understands that the "applicable regulations" are currently the Accounting Separation Regulation issued by the TRA in 2004 (ASR). Please confirm.*

This is correct.

94.2 *The ASR proposes a detailed accounting separation regime for licensees who are dominant or who have significant market power and also for those licensees who have multiple telecommunications licenses. In order to provide a full range of data and voice services and make maximum use of the NFWS license, the Information Memorandum issued by the TRA contemplates that NFWS licensees are likely to also apply for other telecommunications licenses such as ISP and International Telecommunications Services licenses. Please advise whether the TRA is likely to look favourably upon an application for exemption from the obligation to provide separated accounts under the ASR to those NFWS licensee with multiple telecommunications licenses, but who do not have significant market power and who are not dominant.*

## TRA's response to questions on the

### Invitation to Tender for a National Fixed Wireless Services (NFWS) License

The TRA would consider an application under Section 9 of the Accounting Separation Regulation at the time such an application is made under the provisions of Paragraphs 9.1 and 9.3. The TRA would consider such an application on its merits at the time.

#### ITT Annex 2 – NFWS License: Section 26

95. *In relation to section 26.2(c), does the reference to omissions to make a material statement only apply to such omissions which are made knowingly and intentionally?*

The TRA is of the view that under section 26.2 of the NFWS License, the TRA may issue an order of revocation if it transpires that the licensee has omitted to make *any* material misstatement prior to the grant of the license, regardless of whether such omission or misstatement was made knowingly or intentionally.

96. *In relation to section 26.4, will this section also apply in the event that the licensee's frequency license is terminated before its term and replaced with an equivalent type license for spectrum management purposes? If yes, will there be any provision for replacement of the automatically terminated NFWS license with a new license?*

Interested parties should note that, pursuant to section 13.1(b) of the Frequency License, the TRA may *modify* the Frequency License to the extent necessary to ensure that the license complies with spectrum management policy. Further, pursuant to section 13.1(b) of the Frequency License, the TRA must consult with licensees prior to making such modifications.

#### ITT Annex 3 – Frequency License: Section 9

97. *[Confidential: Party's name] assumes that the wording in section 9.1(c) of the frequency license should mirror the wording in section 21(c) of the NFWS license, and should therefore read "not enter into any anticompetitive exclusive arrangements....". If not, please explain reason for the difference.*

The TRA has amended section 9.1(c) of the draft Frequency License to mirror the wording of section 21.1(c) of the draft NFWS License. The amended licenses shall be published shortly with the amended ITT.



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#### ITT Annex 3 – Frequency License: Section 11

98. *Frequency Licence Fees (condition 11) – on what objective basis will future annual frequency licence fees be calculated? Please can the TRA explain why the initial BD 28 000 fee for 2007 not calculated on a pro-rata basis?*

The frequency license fee specified in condition 11 of the draft Frequency License has been calculated by the Ministry of Transportation. The frequency license fee under this Frequency License and other frequency licenses are payable to the Ministry of Transportation via the TRA. The TRA does not set these fees nor calculate their renewal dates.

The Ministry of Transportation's Frequency License policy is that any licenses obtained between November and February are renewable from the January following that period. As the auction process should be completed by the end of February 2007, any reduction of the license fee would result in a shortfall in the amount payable to the Ministry of Transportation.

#### ITT Annex 4 – Forms

99. *Form B: Do you seek principal business for consortium parties of the prospective Licensee, for the bidder, or the registering party? What is the definition of Registering Party? And what is meant by principal business activities, does it mean the commercially launched business activities, because **[Confidential: Party's name]** is in the process to launch other businesses.*

For the purposes of Form B, the Registering Party should be the Bidder. The TRA shall amend this Form to clarify this.

Details of the principal business activity of the Bidder do not need to be limited to existing business activities, provided that Bidders clearly indicate, where relevant, that activities have not been commercially launched.

100. *In relation to Form D, Section 3, please explain what requirements, in addition to an ability to conform with section 26 of the Telecommunications Law of the Kingdom of Bahrain, must be fulfilled to enable the Prospective Licensee to be legally capable of becoming a licensee.*

The TRA recommends that interested parties obtain legal advice to satisfy themselves that they would be in a position to make the declarations in Form D, Section 3.

## TRA's response to questions on the

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101. *Form D, Section 3, requires the Bidder to undertake that it will procure the Prospective Licensee to unconditionally accept all the terms and conditions of the NFWS License and the associated Frequency License, as set out in the Annexes of the ITT. The Licenses in Annexes 2 and 3 to the ITT are still in draft form (5 October 2006 V.2). Please advise whether these draft licenses may be further amended and reissued, following the TRA's review and response to questions from Bidders in relation to the ITT, and if so whether it is the terms of these amended licenses that Bidders must undertake to procure the Prospective Licensee to accept.*

The TRA has considered comments on the ITT (including the draft licenses) received from registered parties and intends to amend the ITT accordingly.

Bidders' declarations should be accurate as at the Bid Submission Date. Therefore, the relevant Bidder's declaration should be in respect of the terms and conditions of the licenses annexed to the version of the ITT that is current on the Bid Submission Date.

Please note in this regard that, pursuant to section 1.6.1 of the ITT, the TRA shall announce a revised Bid Submission Date should the TRA make any changes to the ITT within five Working Days of the announced Bid Submission Date.

102. *The Service License and Frequency License associated with the ITT are marked "draft". Can the final licenses issued to the winning bidders be different to the "draft" licenses in such a way as to affect the bidder's financial, commercial and network rollout plans?.*

Please see the TRA's response to Question 101 above.

103. *Please advise whether the confirmation in Form D, Section 3, that the Bidder is subject to an agreement, arrangement, or understanding with the other members of the Consortium does not need to be provided by Bidders who are bidding in their own right, and not as part of any Consortium.*

This is correct: Bidders that are not part of a Consortium are not required to provide this declaration.

104. *With reference to Section 3 of Form D: Can a consortium/ Joint Venture to be formed after declaration of the bid result?*

## TRA's response to questions on the

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As stated in the TRA's response to Question 3 above and section 2.15.3 of the ITT, a Prospective Licensee may be formed after the Successful Bidders are announced.

However, the Consortium, and consequently the composition of the Proposed Licensee, should be determined prior to submission of the Bid.

105. *Please advise whether the representation and warranty in the second bullet point in Form E is intended to be absolute, or only to the best of the Bidder's knowledge.*

The TRA expects this declaration to be absolute.

106. *In relation to Form F, Section 2, and Form G, Section 2, please advise what the "Instructions to Bidders" are. Please also advise which are the applicable Auction Rules.*

The TRA assumes that this question refers to Form F, Section 2, and Form H, Section 2, and accordingly directs interested parties to the TRA's response to Question 27 above.

#### General Questions

107. *From the Invitation to Tender (ITT), it appears that there is nothing to stop either Batelco or MTC submitting a bid within the terms of the auction should they choose to do so. Would the TRA please confirm that this is the case.*

The TRA can confirm that it has not specifically excluded any existing licensed operators from submitting a bid. Similarly, the TRA cannot state that the bids of existing licensed operators would necessarily meet the Qualification Criteria in section 2.9 of the ITT.

108. *In particular, what measures will the TRA put in place to ensure strict accounting separation by Batelco and MTC such that an appropriate proportion of their existing infrastructure costs for items such as antenna towers is reflected in the prices they charge their customers for products and services provided under the NFWS license?*

The TRA directs interested parties to sections 2.3 and 2.4 of Regulation 2 of 2004, the Accounting Separation Regulation, which outline how relevant parties should account for common costs.

## TRA's response to questions on the

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Further, the TRA draws interested parties' attention to section 21 of the draft NFWS License and section 65 of the Telecommunications Law, which prohibit anti-competitive practices, and section 5.9 of the Information Memorandum.

109. *Is there a definition for significant market-share and significant competition?*

The TRA has not defined significant market share or significant competition.

The TRA has, however, defined significant market power ("SMP") in Determination 2 of 2003, "Methodology for Determining Dominance and Significant Market Power". As stated in section 3.1 in that determination, a market share of 25% creates a presumption of SMP. However, it is conceivable that an operator with a market share less than 25% has SMP, or that an operator with a market share greater than 25% does not have SMP.

Whether or not there is significant competition in a market is a question of fact that may be determined after a market review.

The TRA's determinations are available on the TRA's website.

110. *(a) Does the TRA continue to define retail and wholesale markets as provided in its Dominance Consultation?*

Paragraph VII of Determination 1 of 2006 (the "Dominance Determination") states that:

*"This Determination shall be reviewed no later than 24 months from the date of its issuance. If in the Authority's opinion, market circumstances suggest that an earlier review of the determination would be appropriate, or if a market player or other interested party should present a compelling case for an earlier review, the Authority may undertake an earlier review of the whole or part of this Determination, as it may consider appropriate."*

Although the TRA would hope to undertake a strategic review of telecommunications markets, it is not expected that the anticipated award of two NFWS licenses would of itself warrant a review of the Dominance Determination or the definition of the wholesale or retail markets. Markets are defined in terms of available complements and substitutes and not the underlying technology used to provide the services in question.

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Clearly, should the market circumstances change at some point after the award of the licenses, the TRA will review the Dominance Determination and, in any event, shall review the Dominance Determination by 22 January 2008.

*(b) Does the TRA currently contemplate redefining these retail and wholesale markets on the basis of how services are provided, i.e. wireline versus wireless access?*

As stated above in the TRA's response to Question 110(a), the TRA does not envisage redefining the retail and wholesale markets as a result of the award of the NFWS Licenses, although the TRA may conduct a strategic review that may result in a redefinition of telecommunications markets. Please note, however, that at present the TRA adopts a technology-neutral approach to market analysis.

111. *Has the TRA reached any conclusion (preliminary or final) on market definition for the proposed NFWA services? Is the TRA proposing to treat these services in the same markets for which Batelco has been determined as having significant market power or dominance?*

As stated in response to Question 110 above, it is not expected that the anticipated award of two NFWS licenses would of itself warrant a review of the Dominance Determination. Therefore, if Batelco were awarded an NFWS license, it is not expected to be relevant for the purposes of market definition and established market power whether Batelco would offer a service under the NFWS license or one of its other licenses.

Clearly, should the market circumstances change at some point after the award of the licenses, the TRA will review the Dominance Determination. In any event, the Dominance Determination shall be reviewed by 22 January 2008.

112. *Are there any restrictions on performing OSS / BSS functions from a remote location outside Bahrain (e.g. having the CDRs and the billing performed from [Confidential: Country])? If yes, on which specific OSS and BSS?*

Please see the TRA's response to Question 7171 above. Subject to the provisions of section 26 of the Telecommunications Law, the TRA has no objection to certain functions, such as OSS/BSS, being performed outside of the Kingdom of Bahrain.

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113. *What restrictions exist on the importation of capital equipment or CPEs? What level of taxes will be imposed on them?*

The TRA grants No Objection Certificates (“NOC”) addressed to the Customs, Ports and Free Zone Affairs of the Kingdom of Bahrain (“Customs”) to enable traders to import Telecommunications equipment. Currently the TRA does not impose any charges for the grant of such NOCs. Parties are, however, advised to make their own enquiries regarding import charges by Customs.

The TRA presently uses two methods to certify equipment. On a case-by-case basis, the TRA can carry out the technical certification of technical equipment. However, in most cases, the TRA accepts the international certification. For the TRA to grant an NOC, the following documentation must be provided:

- i. NOC request letter (original copy) from the applicant, stating the applicant's information and address, and the equipment model and brand.
- ii. User guide and documents for technical specifications, including network interface standards.
- iii. Wireless equipment frequency and power output information must be provided to identify its compatibility with the allocated frequency bands in the Kingdom of Bahrain.
- iv. International standards used, such as ITU, EU, ETSI and FCC, including Electromagnetic Compatibility (“EMC”) and Electrical Safety Standards.
- v. Type approval certificates and test reports that confirm technical and safety compliance and compatibility, from accredited approval bodies and/or Test Labs.
- vi. Manufacturer declaration of compliance (conformity) (where the manufacturer has complied with the EU procedure under the Radio and Telecommunications Terminal Equipment Directive 1999/5/EC, as amended).
- vii. A sample of the equipment to carry out tests, if requested by the TRA.

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114. *Please can the TRA confirm that its type approval procedures will not allow any equipment to be supplied or used which has mobile capability.*

The type approval procedure, which originates from s.38 of the Telecommunications Law, is used to govern the importation and use of telecommunications equipment in the Kingdom of Bahrain.

The TRA may issue conditional or unconditional type approval certificates in respect in accordance with s.38(e) of the Telecommunications Law and, further, may issue an approval certificate in respect of "particular equipment only or to any equipment of a description specified ... in the certificate".

The TRA's primary interest when determining whether or not to type approve telecommunications equipment is ensuring that all such equipment meets local and recognized international standards, specifically with regard to frequency spectrum compliance and interoperability with the national networks.

In accordance with the TRA's policy, stated in the Spectrum Policy and Planning document, sections 3.3 to 3.6 of the draft NFWS license specifically restrict the provision of mobile telecommunications services over a national fixed telecommunications network. This restriction, combined with the TRA's powers under the NFWS license and the Telecommunications Law to respond to a breach of a license condition, provides a sufficient and more appropriate mechanism for restricting the use of a national fixed telecommunications network for mobile telecommunications services.

For further information on the type approval procedure, please see sections 3.1.5 and 9.2(a) of the Spectrum Policy and Planning document.

115. ***[Confidential: Party name]** would like to ask if the TRA would consider issuing further Frequencies to the successful bidders or to issue further license for NFWS in the near or distant future.*

The TRA directs interested parties to the Spectrum Policy and Planning document for further details on future release of radio spectrum. The Spectrum Policy and Planning document is available on the TRA's website.

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116. *Does the TRA intend to issue in future any additional fixed wireless access licenses and spectrum licenses that will authorize the provision of national fixed and/or nomadic wireless service (on top of the two licenses that will be awarded through the current ITT process)?*

Please see the TRA's response to Question 115 above.

117. *Can TRA give some guidance on future expected spectrum auctions, e.g. in the 5.4 GHz band?*

Interested parties are directed to the Spectrum Policy and Planning document, which is available on the TRA's website. As stated therein, the band 5.470 GHz to 5.725 GHz is assigned exclusively to the Government for its use and the band 5.150 GHz to 5.350 GHz is currently assigned for wireless LAN use under a light licensing regime.

118. *What future plans does the TRa have for releasing other radio spectrum at a later date?*

Please see the TRA's response to Question 115 above.

119. *Will an operator successful in winning a 3.5 GHz licence be restricted from utilizing other spectra?*

Under section 43 of the Telecommunications Law, no person may operate a telecommunications network or radiocommunications equipment which uses radio frequency spectrum in the Kingdom of Bahrain without a frequency license.

The TRA does not at present have any restrictions on licensees applying for other currently available telecommunications frequency licenses. Please refer to the Spectrum Policy and Planning document is available on the TRA website.

120. *In terms of radio spectrum to be licensed through this NFWS license auction, is this spectrum currently vacant?*

Yes, this spectrum is currently vacant.

121. *If it is not currently vacant; what principles will be established for clearing the band and who will bear the costs?*

Please see the TRA's response to Question 120 above.



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122. *Within the terms of the licenses issued; what will be the guard bands between adjacent users?*

There are no specified guard bands between the licensed frequency blocks associated with the frequency licenses that are associated with the NFWS licenses. Interested parties should refer to Schedule A of the Frequency License for details of the technical conditions associated with this license.

123. *If there are no guard bands, what modulation, bandwidth, and power levels are to be used by adjacent users?*

The TRA takes a technology-neutral approach regarding the channel spacing and modulation schemes deployed by a licensee. Please refer to the technical conditions and technical document referred to in Schedule A and section 4 of the draft Frequency License.

124. *Is there a governing principle on the responsibility towards cost of removal of interference granted that both operators may be operating within their licensed parameters?*

Please see the TRA's response to Question 123 above.

125. *What are the medium and longer term plans of the TRA regarding local loop unbundling and access to the last mile of the incumbent fixed network (Batelco)?*

As stated in the Telecommunications Law, the TRA intends to introduce local loop unbundling obligations on public telecommunications operators with significant market power.

126. *By what date will the TRA introduce local loop unbundling (LLU) and compel Batelco to provide access to their local exchanges for the installation by alternative operators of equipment such as DSLAM's?*

Please see the TRA's response to Question 125 above.

127. *Spectrum policy, Information Memorandum or ITT do not clarify the type of duplexing (TDD or FDD) for 3.5 GHz spectrums. Are Operators allowed to choose the type, which is best as per latest technology and RF planning?*

The TRA takes a technology neutral approach. Therefore the choice of duplexing would be a commercial decision for

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licensees, subject to their adherence to the technical conditions set out in Schedule A of the relevant Frequency License.

128. *Does one have to take frequency clearance for subscriber stations?*

The TRA considers this question to be ambiguous. The TRA has interpreted this question to mean "Does the licensee require approval to use its licensed spectrum at subscriber stations?". The answer to this question is "No".

The Frequency License granted to the NFWS Licensee authorizes it to use that frequency for the purposes of provision of the Licensed Services at subscriber stations.

129. *Does one have to pay any additional license fee/spectrum fee for subscriber station?*

Refer to questions 98 and 128 above. However, should the Frequency Licensee seek additional radio frequency spectrum for these purposes from the Ministry of Transportation additional fees may be payable to the Ministry of Transportation. The TRA does not set those fees.

130. *Does one have to take frequency clearance for base stations?*

The TRA considers this question to be ambiguous. The TRA has interpreted this question to mean "Does the licensee require approval to use its licensed spectrum at base stations?". The answer to this question is "No".

The Frequency License granted to the NFWS Licensee authorizes it to use that frequency for the purposes of provision of the Licensed Services at base stations.

131. *For providing back-haul to BTS, one needs to put MW Point to Point links, in 11/13/15 GHz. The likely spectrum bandwidth requirement is 112+ 112 MHz. What are the additional spectrum charges for this spectrum?*

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The spectrum charges for these microwave links are detailed in the Spectrum Policy and Planning document, available on the TRA's website.

132. *Does the TRA have ruled out any possibility to make the NFWA licenses evolve into Universal Licenses in the future, e.g. allowing for the provisioning of mobile services?*

In accordance with section 9.2 of the Spectrum Policy and Planning document, the TRA does not at present anticipate extending the terms of the NFWS license to include the provision of mobile telecommunications services.

133. *(a) Why has the TRA not revised its seemingly incorrect assertion about the actual broadband services penetration rate in the Kingdom?*

The information on broadband penetration in section 2.2 of the Information Memorandum clearly states the source of the data and that broadband penetration has been calculated as a proportion of total Bahraini population. The TRA is confident that interested parties, such as the questioning party, are in a position to ably interpret this information.

Further, as expressly stated in the Information Memorandum, interested parties are informed that they should conduct their own independent assessment of the potential value of the NFWS license and that they should not rely upon the information in the Information Memorandum.

- (c) What is the correct broadband services penetration rate in Bahrain?*

The TRA is of the view that there can be no definitive answer to the question "what is the broadband services penetration rate in Bahrain". The TRA has provided publicly available information and has invited interested parties to conduct their own investigations. To do any more than this may induce interested parties into relying on information provided by the TRA as investment advice.

As stated in the Information Memorandum and the TRA's response to Question 134(a) above, the TRA considers it to be the responsibility of interested parties to conduct the appropriate due diligence in determining whether to participate in the auction.

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134. *Are references to months and years in the draft NFWS and spectrum licenses based on the Gregorian or Hijra calendar?*

In keeping with references to month names, all references to months and years in the ITT and draft licenses are based on the Gregorian calendar.

135. *What are the non-telecom operations for which the licensee may be required to seek a license in the process of implementation of the obligations under the Fixed Wireless License?*

The TRA may not give legal advice on the implementation of a company's operations. Companies that have concerns regarding the establishment or running of a company in the Kingdom of Bahrain should seek local legal advice.

136. *Is there any restriction on serving any market segment or customer category?*

The TRA has not imposed any general restrictions relating to the provision of services to any specific market segment or customer category. However, interested parties should note the subscriber connection requirement is section 4.3 of the draft NFWS License.

137. *Can the NFWS licensee operate as a pure wholesaler, i.e. provide service to end users solely through other service providers?*

Please see the TRA's response to Question 11 above. Bidders should consider the requirement to submit a viable business plan to provide telecommunications services under the NFWS License, having regard to their obligations under the draft NFWS License, including but not limited to sections 4 – 7 of the License.

138. *Provided that the NFWS licensee holds a VAS license, will the licensee be authorized to provide video services?*

Yes, the Licensee would be able to provide video services as long as they are not broadcasting services. Broadcasting services is defined in the Telecommunications Law. Further, Bidders should seek independent legal advice on compliance with the the laws of the Kingdom of Bahrain, including those applicable to broadcasting.

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139. *What measures are to be put in place to manage, audit and enforce the management of the licensed and unlicensed spectrum?*

Please note that under section 43 of the Telecommunications Law, all telecommunications networks or radiocommunications equipment that use radio frequency must be licensed.

Interested parties are directed to section 42 of the Telecommunications Law for an overview of the management of licensed spectrum.

140. *Will ministries, who are outside TRA controls be able to interfere within the licensed spectrum allocated. What measures will be set to safeguard allocated spectrum?*

Please see the TRA's response to Question 139 above. Interested parties are advised to seek independent legal advice on the functions of the Ministries in the Kingdom of Bahrain.

141. *Whilst the ITT and the preceding Information Memorandum do not specify the technology to be used for deploying NFWS, it is widely accepted that WiMax is the way for the future for fixed wireless access. To the best of our knowledge, the standards on which WiMax is based, the IEEE 802.16-2004 specification allows for either 50 MHz or 100 MHz duplex frequency separation. In contrast to this, the ITT and the draft spectrum license specify a duplex separation of 90 MHz. This invariably means that NFWS licensees will not be able to utilize 10 MHz of the allocated spectrum in Bahrain if WiMax were to be used. Can the TRA please comment on this aspect?*

A total of 200 MHz of spectrum is available in the 3.5 GHz band for the provision of Fixed Wireless Services. Two 10 MHz guard bands are required at the extremities of the band to ensure a measure of isolation between this band and the adjacent bands. The remaining 180 MHz of spectrum is divided equally between the two frequency licenses associated with the NFWS license. The TRA has taken a technology-neutral approach, allowing licensees to deploy the technology of their choice in the 90 MHz of spectrum available to them.