

# **CABLE & WIRELESS**

**Response to TRC Consultation on**

**Modified Invitation to Apply for a 700, 1900 MHz and  
AWS-1 Spectrum Award**

**June 23, 2016**

## COVER SHEET FOR RESPONSE TO A COMMISSION CONSULTATION

### BASIC DETAILS

**Consultation title:** Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award

**Name of respondent:** Mr. Tim Ringsdore

**Job title:** Managing Director

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**Organisation:** Cable & Wireless (BVI) Limited

### CONFIDENTIALITY

Please tick below which part of your response you consider is confidential, giving your reasons why

Nothing

Whole response

Part of the response

Details of Confidential Information

If you want part of your response, your name or your organisation not to be published, we can still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that the Commission can publish. However, in supplying this response, I understand that the Commission may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, the Commission can disregard any standard email text about not disclosing email contents and attachments.

The Commission seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name: Tim Ringsdore

Signed (if hard copy)

## **1. INTRODUCTION**

**1.1** Cable and Wireless (BVI) Limited is pleased to provide the following answers to the Commission's questions set out in the '*Commission Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award*' (the Consultation) published 9 June 2016.

**1.2** Cable & Wireless (BVI) expressly states that failure to address any issue raised in the Consultation Documents does not necessarily signify its agreement in whole or in part with any position taken on the matter by the TRC or respondents. Cable & Wireless reserves the right to comment on any issue raised in the Consultation Documents at a later date.

## **2. PRELIMINARY COMMENTS**

**2.1** In the Consultation, the Commission states that '*Following the oral judgment of 13 January 2016 and the order delivered by the High Court on 29 February, 2016 (Order), the Commission has amended the ITA to accommodate the terms of the Order. The Modified Invitation to Apply (MITA) is the subject of this Consultation.*'

**2.2** To facilitate transparency, we recommend that the above referenced Court Order be included as an appendix to the Consultation since all changes proposed by the Commission do not appear to be connected to the Court Order of 29 February 2016 and the Commission has said that the ITA is amended to reflect the Order resulting in the MITA.

**2.3** For instance at paragraph 2.3, the Commission has added language to clarify that '*...spectrum to be surrendered to meet a spectrum cap shall be vacated prior to the grant of a Frequency Authorisation for spectrum in this Award.*' And the TRC instructs at paragraph 2.7.1 that the Qualification documents are to be amended to reflect any known material changes between September 2015 and July 2016 when applications for the spectrum are to be submitted. At paragraph 2.7.2, the TRC also proposes that applicants may change their spectrum preferences. This is a material change that does not appear to arise from the Order and could potentially be problematic for the TRC. This is similarly the case with '*Additional Commitments*' at paragraph 2.7.3.

**2.4** On the Cover Sheet for Response, the TRC has the statement, '*If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here*'. The intent of this approach by the TRC is not clear. FLOW does

not support any approach that gives a respondent the option of not having its response published prior to the end of the Consultation. Transparency requires that all responses be published in full or part (subject to confidentiality exceptions), prior to the end of the consultation. FLOW request that the TRC clarifies its statement.

### **3. FLOW'S RESPONSES TO TRC'S QUESTIONS**

***Question 1: Do you agree with the modified timetable proposed for the Award. If not please give reasons for your response.***

**FLOW's Response:**

Yes.

***Question 2: Do you agree with permitting an Applicant to change its Lot preferences (Form E)? If not please give reasons for your response.***

**FLOW's Response:**

Changes to Lot preferences and Additional Commitments are material changes that do not appear to arise from the Order of 29 February 2016. This could, potentially, be problematic for the TRC since it could be viewed as a procedural irregularity.

***Question 4: Do you agree with the proposed change to the time frame to agree and sign Undertakings at least 2 working days prior to Registration? If not please give reasons for your response.***

**FLOW's Response:**

The Commission's proposal to sign Undertakings at least 2 working days prior to Registration may be advantageous to the Commission but again does not appear to be driven by the Order. The MITA should be driven by the Order.

**Question 5: Do you agree with the replacement of guarantees in the Undertakings with a compliance incentive in the Frequency Authorisation? If not please give reasons for your response.**

**FLOW's Response:**

No. Again, The Commission's proposal is not driven by the Order. Moreover the Commission is seeking to re-open a consultation that is closed. The Commission is constrained to issue an MITA in conformity with the specifics of the Order and in accordance with its own stated objectives that '*..the Commission has amended the ITA to accommodate the terms of the Order...*'

**END**