



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

Consultation

Publication date: 9 June 2016

Closing date for responses: 23 June 2016

Reference Number: 001/2016

About this document

This Consultation is inviting comments on the Modified Invitation to Apply for the 700, 1900 MHz and AWS-1 Spectrum Award.

The **Telecommunications Act 2006**¹ of the VI (the **Act**) established the Commission as an independent regulatory authority overseeing the telecommunications sector in the VI.

The Commission is the awarding body that will grant Frequency authorisations for the Offered Spectrum. Frequency Authorisations will be granted according to section 19 of the Act, the Telecommunications Code (Part 5) (Granting Frequency Authorisations (Interim Procedure) Requirements, 2011) and the Rules and processes described in the MITA.

¹ The Telecommunications Act ,2006 can be viewed at www.trc.vg

Contents

Instructions for submitting a response	4
Cover sheet for response to a Commission consultation	5
1 Introduction	6
2 Key changes in MITA.....	7
2.1 Time table	7
2.2 Spectrum offered and award method	7
2.3 Spectrum caps	7
2.4 Services to be provided	7
2.5 Spectrum fees	8
2.6 Registration and Application – New Applicants.....	8
2.7 Registration and Application – Previously Registered Applicants	8
2.7.1 Qualification documents	8
2.7.2 Form E.....	8
2.7.3 Additional commitments.....	8
2.7.4 Form G	9
2.8 Undertakings.....	9
2.9 Guarantee of Undertakings Commitments	9
3 Summary list of questions.....	11
Appendix A	132
Appendix B	13

Instructions for submitting a response

The Telecommunications Regulatory Commission of the Virgin Islands (the **Commission**) invites responses on this consultation document from all interested parties. Responses should be submitted by **23 June 2016**.

We strongly prefer responses to this document to be sent by email to consultations@trc.vg (indicating the subject: "Consultation on the Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award"). Alternatively, responses may be sent to the address (or the P.O Box number) below:

Consultation on the Modified Invitation to Apply for a 700, 1900 MHz and AWS-1 Spectrum Award –Telecommunications Regulatory Commission P.O. Box 4401 or 27 Fish Lock Road, 3rd Floor Road Town, Tortola, British Virgin Islands VG 1110. Responses may also be faxed to: (284) 494 6786

Responses from corporate bodies (legal persons) should include:

- the name of the company/institution/association/other organisation;
- the name of a principal contact person; and
- full contact details (physical address, postal address, telephone number, fax number and email address).

Responses from individual (natural) persons, should include name and contact details (including email).

We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of the responses, and help to maintain confidentiality where appropriate.

In the interest of transparency, the Commission will normally make all submissions received available to the public, subject to the confidentiality of the information received. The Commission will evaluate requests for confidentiality according to relevant legal principles.

Respondents are required to clearly mark any information included in their submission which they consider to be confidential, and provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission. The Commission will determine whether the information claimed to be confidential is to be treated as such and, if so, will not publish that information. In respect of information that is determined to be non-confidential, the Commission may publish or refrain from publishing such information at its sole discretion.

Once the Commission has received and considered responses to this consultation document, it will issue a final Modified Invitation to Apply (**MITA**) and a draft Frequency Authorisation which will be published on the Commission's website.

Cover sheet for response to a Commission consultation

BASIC DETAILS

Consultation title: To (Commission Contact)

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

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

Nothing	Name/contact details/job title
Whole response	Organisation
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

Signed (if hard copy)

1 Introduction

The **Telecommunications Act 2006**² of the VI (the **Act**) established the Commission as an independent regulatory authority overseeing the telecommunications sector in the VI.

The Commission is the awarding body that will grant Frequency authorisations for the Offered Spectrum. Frequency Authorisations will be granted according to section 19 of the Act, the Telecommunications Code (Part 5) (Granting Frequency Authorisations (Interim Procedure) Requirements, 2011) and the Rules and processes described in this MITA.

The Spectrum Award 2015 was established to bring 700 MHz, 1900 MHz and AWS-1 spectrum to market in the British Virgin Islands. The Commission published the Initiation to Apply (**ITA**) on 19 August 2015, Registration for the Award was on 18 September 2015 and Applications were made on 30 September 2015. The Award was put on hold due to litigation in the High Court of the Virgin Islands.

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. The Commission gave notice of Consultation with respect to the MITA on 26 May 2016.

There are relatively few changes in the MITA compared to the ITA. For this reason, a limited period is being allowed for responses to this consultation. A summary of the differences between the MITA and the ITA is at Appendix A. Section 2 of this Consultation explains the key changes between the ITA and the MITA. Key changes in the MITA.

² The Telecommunications Act ,2006 can be viewed at www.trc.vg

2 Key changes in MITA

2.1 Time table

The revised timetable for the Award set out in the MITA is shown in Table 2-1.

Table 2-1: Time table

Award events	Date and time
MITA issued	1 July 2016
Deadline for Requests for Clarification	15:30 on 8 July 2016
Deadline for Registration	15:30 on 8 July 2016
Final Date for Responses to Requests for Clarification	15 July 2016
Deadline for Application Submission	15:30 on 22 July 2016
Successful Applicants Notification Date	12 August 2016
Frequency Authorisation Grant Date	19 August 2016 – subject to compliance with the Rules and agreed Undertakings.

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

2.2 Spectrum offered and award method

There are no changes to the offered spectrum, spectrum packaging and Award method set out in the ITA.

2.3 Spectrum caps

There are no changes to the spectrum caps set out in the ITA. However, it has been made clear in the MITA 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.

2.4 Services to be provided

There are no changes to the services to be provided set out in the ITA.

2.5 Spectrum fees

There are no changes to the spectrum fees set out in the ITA.

2.6 Registration and Application – New Applicants

An Applicant who did not previously Register for the Award will need to do so by the Registration Date and pay the Registration Fee of \$500. It shall submit Qualification Documentation and Additional Commitments in accordance with the MITA.

A new Applicant shall complete Form G (see Appendix B) stating that it is a new Applicant and that it has not previously submitted any Application for the Award.

2.7 Registration and Application – Previously Registered Applicants

An Applicant who previously Registered with the Commission for the Award and submitted Qualification documentation and Additional Commitments in accordance with the ITA will need to Register again to participate in the Award. The Registration Fee of \$500 shall be waived for such an Applicant.

There are a number of options for an Applicant who previously Registered and submitted Additional Commitments in accordance with the ITA. These are shown on Form G and explained below.

2.7.1 Qualification documents

If there are material changes to the information contained in the previously submitted Qualification documents, revised Qualification documentation shall be submitted. Examples of the sort of information that could have changed include change of ownership and change of key personnel. Known material changes not notified to the Commission at Registration could lead to the Applicant being disqualified.

2.7.2 Form E

Applicants set out their preferences for the spectrum offered on Form E. If an Applicant wishes to change its preferences for the spectrum available, it shall submit a revised Form E in accordance with the MITA. The opportunity to change preferences is being offered as an Applicant's plans may have changed in the time period following its previous Application.

2.7.3 Additional commitments

An Applicant may revise its Additional Commitments. An applicant may wish to do this, for example, if its business plan has changed or it wishes to modify its rollout, coverage

or quality of service commitments. The opportunity to change Additional Commitments is being offered as Applicants plans may have changed in the time period following the previous Application. Note that additional commitments will be assessed against the criteria in the MITA, which are unchanged from those in the ITA.

An Applicant who indicates on Form G that it is making changes to its Additional Commitments shall submit the amended Additional Commitments in accordance with the rules set out in the MITA. An Applicant who indicates on its Form G that it is not making changes to its Additional Commitments need not resubmit its original Additional Commitments.

2.7.4 Form G

The layout of Form G is shown at Appendix B.

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

Question 3: Do you agree with permitting an Applicant to change its Additional Commitments? If not please give reasons for your response.

2.8 Undertakings

Undertakings, where provided by an Applicant as an alternative to certification on Form F of its operating within the terms of its current Licence and frequency authorisations, compliance in all material respects with the Act, the Regulations, the Telecommunications Code and any instructions of the Commission, shall be agreed with the Commission at least 2 working days prior to Registration. This Rule has been inserted to ensure that only Undertakings agreed with the Commission and signed by both parties are submitted at Registration.

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.

2.9 Guarantee of Undertakings Commitments

The Commission has reviewed the use of guarantees in the Undertakings and has decided that these will be replaced by a compliance incentive in the Frequency Authorisation.

New clauses 2.1.4 and 2.5.3 have been added to the Draft Frequency Authorisation at Appendix A of the MITA. The clauses provide:

“2.1.4 The Authorisation Holder shall at all times strictly comply with the terms of the Undertakings agreed between the Commission and the Authorisation Holder.”

“2.5.3 Without prejudice to any other right of action available to the Commission, the Commission shall have the right to revoke this Frequency Authorisation upon 30 days written notice if the Authorisation Holder is in breach of the Undertakings and has failed to cure the breach to the Commission’s satisfaction within the 30 day notice period.”

The Commission’s reasoning for use of a compliance incentive in the Frequency Authorisation is that it provides a very specific and transparent mechanism for enforcement purposes.

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.

3 Summary list of questions

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

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

Question 3: Do you agree with permitting an Applicant to change its Additional Commitments? If not please give reasons for your response.

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

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.

Appendix A: Summary of changes between the ITA and MITA

The table below lists the substantive changes made in the MITA. Numbering and other minor changes are not listed. The section numbers refer to the MITA.

MITA Section	Change
1.2	New paragraph explaining why the spectrum award was put on hold.
1.3	New paragraph explaining modification to the ITA and the consultation on the MITA.
2.2 ii.	Insertion of requirement for Undertakings to be agreed and signed at least two (2) working days prior to Registration.
2.12	Insertion of words to make clear that spectrum to be vacated to comply with a spectrum cap must be vacated prior to the grant of a Frequency Authorisation in the Award.
4.1	Insertion of words regarding waiving of the Registration Fee for a person that submitted an Application in accordance with the ITA. (see also 5.3 iii.).
5.3 ii.	Insertion of words regarding requirement for Undertakings to be agreed and signed at least 2 working days prior to Registration.
5.13	New paragraph explaining the options available to an Applicant that submitted an Application on 30 September 2015. (see also 5.17; 5.18; 5.19; 6.1; 6.3 and 6.6).
6.7 ii.	Insertion of footnote regarding technology developments and international best practice. (See also Appendix C).
9.1	Revised Award timetable.
10	Various updates to definitions.
Appendix A	
2.1.4	New clause on requirement on the Holder to comply with Undertakings.
2.5.3	New clause on right of the Commission to revoke Frequency Authorisation in event of breach of Undertakings.
Appendix B	
Form F	Amendment to include requirement for Undertakings to be agreed and signed at least 2 working days prior to Registration.
Form G	Inclusion of Form G

Appendix B: Form G – Application Content Certificate

Name of Applicant:

Status

Did you register for the Award and submit Qualification documentation and Additional Commitments on 30 September 2015? **Yes / No.**

If you answer **No** to this question you are declaring that you have not previously made an Application.

Documentation Requirements

If No: Please submit your Registration and Application in accordance with the rules set out in Section 5 of the MITA.

If Yes: Please supply the information requested below:

1. Are there changes to the Qualification documents? **Yes / No**
2. Are there changes to Form E (Lot Preference Form)? **Yes / No**
3. Are there changes to the Additional Commitments? **Yes / No**

For any of questions 1-3 where the answer is yes, please submit the amended documentation in accordance with the rules set out in Section 5 of the MITA.

The undersigned accepts and understands the declarations made in this Form G.

Printed Name of Authorised Person

Signature

Date of signature (MM/DD/YYYY)