

المملكة الأردنية الهاشمية
The Hashemite Kingdom of Jordan



هيئة تنظيم قطاع الاتصالات

Telecommunications Regulatory Commission (TRC)

**A PROGRAM OF LICENSING IN COMPLIANCE WITH GOVERNMENT
POLICY IN THE ICT SECTORS & POSTAL SECTOR**

PROGRAM OF LICENSING

1. THE AIMS OF THE LICENSING PROGRAM

A program of licensing of entrants to the Fixed Telecommunications sub-sector is necessary as rights, granted under the license of Jordan Telecom (JT), to exclusivity of supply of services by JT end at 31st December, 2004 and it is accordingly essential to enable the entry of competitors to JT at 1st January, 2005.

In order that the program of licensing to Fixed Telecommunications is set within a proper context, this document further informs of the evolution to an Integrated Regime of licensing and regulation that is common to all activities within telecommunications. The Integrated regime will be fully operational in 2006, in accordance with the Telecommunications Law and related existing license agreements.

1.1 2005 Licensing Program

The 2005 Program of licensing will allow entry to the fixed services market in competition with JT. The overall aim is to achieve the specific goals of Government Policy, in particular to

- a) The enhancement from present levels of the scope, availability and quality of services, and, choice of service providers, made available in Jordan. It is necessary that fixed services available in Jordan at least match those of peer states. They are necessary to the development and growth of the economy and the meeting of government's social goals.

- b) Particular goals, within the progressive development of the sub-sector, include but are not limited to; the introduction of alternative international services, alternative international capacity and gateways, the exploitation of new technologies, notably in the data communication area, and, the exploitation of technologies and systems that may be used for the provision of multiple services.
- c) It is a goal, that, overall, the fixed telecommunications sub-sector supplies facilities and capacity upon which other sectors within ICT may add value in an innovative manner. These elements to be affordable to the user and profitable to the supplier.”

1.1.1 **Motivations**

In formulating its Program, therefore, TRC has been motivated by a desire to open immediate opportunities for the private sector to innovate and invest, and, to bring existing National assets (networks owned by some governmental organizations) into play within the telecommunications market, in a proper and fair manner.

1.1.2 **Anticipated Outcome Of The Program**

TRC anticipates that its Program, together with necessary regulatory measures related to interconnect and access services and the enablement of service supplier selection by users, will result in the entry to the market of a limited number of providers of international capacity and services, voice over internet protocol (VoIP) and other data service providers, enhanced provision of broadband services, the expansion of the scope of the businesses of existing licensees, including those of JT and the licensees providing public mobile wireless services, and, the greater utilisation of existing assets. TRC does not anticipate that its Program will result in any major replication of the JT fixed network, which will remain the dominant infrastructure in the fixed service market.

1.1.3 **Removing Some Constraints From JT**

//

The Program specifically recognises that in subjecting JT to competition it is necessary to progressively remove or alter the regulation of JT activities. There must continue to be safeguards against the abuse of market power because most market entrants must use JT services in some form. However, as true competition arises JT can be freed of certain constraints. The ending of monopoly, whilst a challenge for JT, for which it has had several years to prepare, also represents an opportunity for it to enter a new phase of innovative development.

/

1.1.4 **Benefits**

//

Substantial benefit will arise from the liberalisation of the fixed sub-sector. The benefits will be seen not only in lower user pricing within expanding levels of demand, but also in a wider stimulus to the National economy. It can be expected, for example, that IT enabled services that have a dependence upon the availability of plentiful and reasonably priced fixed telecommunications capacity, will be established

1.2 **Evolution To The Integrated Regime**

/

The evolution to the Integrated Regime of licensing and regulation to be fully implemented in 2006, will further improve the efficiency of all markets within telecommunications.

- a) The present regime is based on the assumption that the fixed voice business of JT will be the dominant force in the market. JT fixed voice services remain an important element of the overall market, but increasingly mobile and data services are taking the leading role. It is also a fact that present and future technology developments mean that it is practically difficult, as well as being unfair to some licensees, to continue to maintain the old distinctions between fixed and mobile services and between voice and data.

(

- b) TRC will implement an Integrated Regime that recognises these realities and removes outdated distinctions and prohibitions associated with narrow service and technology definitions in favour of a common approach to licensing of all services activities. This will permit TRC to adopt a less interventionist and confrontational role in regulation of the market by placing less emphasis on the enforcement of license terms and more on the assurance of true competition.
- c) It is clearly necessary to anticipate this Integrated Regime, which will not be fully effective until 2006, when licensing in 2005.

2. WHAT IS WITHIN THE 2005 LICENSING PROGRAM

2.1 The Law sets the requirement

Article 20 of the Telecommunications Law states:

“The establishment, operation, and administration of public telecommunications networks, as well as the provision of public telecommunications services, is not permitted unless a license has been obtained pursuant to the provisions of this Law.”

2.1.1 Individual and Class Licenses

Accordingly, as of January 1, 2005, all new service providers and existing class licensees will be issued with licenses in the form that will allow for the evolution to the full Integrated regime that is described subsequently.

- a) All providers of public telecommunications services and underlying networks that use scarce resources will require Individual licenses. Scarce resources are defined as radio spectrum, public rights of way and telephone numbers. The initial fee upon award of an Individual license will be JD 100,000

- b) All providers of public telecommunications services that do not use scarce resources, or those whose use of scarce resources is determined by TRC not to be material, will require Class licenses. The initial fee will be JD 30,000

The application requirements and associated criteria for the award of an Individual License are more stringent than those applied to Class licenses.

TRC reserves the right to modify license fees when such a modification can be objectively justified by extenuating circumstances or process of licensing and are published in advance of application for licenses.

All licensees will pay an annual license fee, representing a percentage of revenues arising from licensed activities, which recovers the costs of TRC in regulating the market.

2.1.2 **Exclusions Related To Scarce Resources**

It has been stated earlier that the test to be applied to determine whether an Individual rather than a Class license must be sought is whether the licensee intends to further apply for, or secure, the use of scarce resources. It has also been stated that TRC will have some level of discretion in applying this test, where it can specifically determine that the use of scarce resources will not materially deplete the resource so as to create a competitive barrier. If TRC makes such a determination the applicant may operate under a Class license.

For greater certainty, TRC states some specific instances where it presently intends to apply this discretion with regard to scarce resources:

- 1. Providers of public VSAT based services, to the extent that the only scarce resource used is radio spectrum directly related to VSAT operation and in operating satellite systems in the ITU configuration

(VSAT)

2. Radio spectrum used on a secondary or non-interference basis, eg. Internationally unlicensed spectrum typically used for WiFi.

.()

3. Use of dialing codes for routing to enable carrier pre-selection functions.

4. International Signaling Point Codes (ISPC).

.(ISPC)

2.2 **Treatment of JT and Licensees Providing Public Mobile Wireless Services**

/

Jordan Telecom and the current public mobile wireless licensees will not be issued with new licenses to be effective 1st January, 2005 but will instead have of the order of an additional year to move to the new Integrated licensing and regulatory regime (target January 1, 2006), subject to the related provisions of the telecommunications law and existing license agreements, and the completion of necessary procedures (if any) set out therein, as well as other procedures that the TRC develops to ensure equivalent and fair treatment of these licensees with respect to each other and to new applicants for individual licenses. Those licensees may, of course, voluntarily transition to the Integrated licensing within 2005, should they so wish.

()

()

2.3 **No Constraints on Services Provided or The Means of Provision**

/

Within the context of application procedures and initial fees, there will be no limitation on the number of Licenses that will be issued, or upon the type and range of non public mobile wireless services that may be provided, or on the types of associated networks used, except as required by considerations relating to normal network safeguards, security, use of scarce resources, and technical limitations. The TRC will lend its support to the introduction of new technologies within its type approval mechanisms and by expediting consideration of proposals

Licensees will be required, when applying for licenses, to advise both the details of technology to be used and the services to be provided, and subsequently to advise TRC of any changes to services or technologies. Beyond these requirements, licenses will not be granted for specific services or technologies but for all and any activities, except the provision of services that represent the licensed activities of the public mobile wireless services licensees.

The TRC does not intend, in general, to impose geographic service coverage obligations or limitations upon new licensees. It prefers that market forces should determine the extent of coverage. However, situations may exceptionally arise where a coverage obligation may be an appropriate measure to be applied in the interests of fair competition or for other compelling reasons, including compliance with Government Policy. Should such circumstances arise the TRC will consult publicly, before imposing such an obligation by means of a schedule appended to licenses or through specific Regulation.

2.4 **Equal Opportunities for Existing and New Licensees**

It is important not to disadvantage existing licensees that are not required to transition their licenses until 2006. Accordingly, from January 1, 2005, if JT or the four existing holders of licenses that relate to the provision of various forms of public mobile wireless services (public mobile wireless licensees) wishes to provide services, other than services already permitted under their existing licenses, they may apply for a license under the 2005 licensing arrangements that have been described. Such a license would only be granted to a subsidiary or affiliate entity of the licensee. The grant of a new license would, for example, permit the independent provision of international services by subsidiaries or affiliates of the public mobile wireless services licensees, in a manner that ends the monopoly of JT in that area and thus offers potential advantage to public mobile wireless services licensees.

It is also equally important that market entrants and those existing licensees that transition licenses before 2006 be assured that in due course parity of licensing will be achieved. Accordingly, licenses issued to a subsidiary or affiliate of JT or a public mobile wireless services licensee, under the 2005 Program, will incorporate amongst attached schedules an acknowledgement that in accepting the grant of a license to a subsidiary or affiliate it will transition its existing licenses to the Integrated Licensing and Regulatory regime, upon its introduction (target January 1, 2006).

.()

2.5 **An evolving Environment**

/

As indicated earlier in this document the elements of the liberalization process, and in particular the progression toward an Integrated Licensing and Regulatory Regime, are evolutionary in nature. The approach to licensing that has been adopted means that licensees will be progressively governed by the terms of generally applicable Regulations as these are developed, rather than by detailed terms within or appended to licenses. By 2006, the full 'body of regulation' will be in place within the Integrated Regime.

In acknowledgement that there can be concern that the imposition of Regulations may provide opportunities for TRC to act in an arbitrary manner, TRC undertakes that, except in circumstances of self-evident emergency, proposals for Regulations will be submitted for public consultation and the results of that consultation will be published before any subsequent Regulation is put in place.

In any evolutionary environment, and particularly in one in which certain licenses may not be transitioned until 2006, issues of disparity of licensing and regulation between licensees might arise within 2005. TRC acknowledges its obligations to existing licensees with regard to parity and will so order its licensing and Regulation introduction program so as to maintain substantive parity of treatment. Clearly, disparity of treatment will continue to remain appropriate where it is associated with safeguards, such as safeguards against the abuse of market power or other market dominance related matters.

()

3. ACTIVITIES FALLING OUTSIDE THE 2005 LICENSING REQUIREMENTS

In determining an approach to licensing for 2005, it is also necessary to determine the activities that can take place without the need for licensing.

3.1 International Capacity and Connection Points

An important factor in the development of the telecommunications sector in Jordan, and also the market for IT and telecommunications based services, is the availability of international transmission capacity. This capacity, the most important of which has been the FLAG submarine cable that provides optical fiber based transmission facilities, has been under the control of JT and accordingly the issue of separate licensing and regulation has until now not arisen.

(FLAG)

The TRC has established that submarine cable operators do not need licenses for the provision of cable to Jordan to the point where it connects to another public telecommunications network within Jordan. The provision of service from the connection point inward to Jordan is a licensable activity. These stipulations will also apply to similar systems of satellite telecommunications.

In relation to points of connection for international capacity it is the intention of TRC to regulate to ensure that these points become open to use by providers other than JT.

Present regulation upon JT, to the extent that the need for it arises because of its control of those points, will be eased as competition develops at those points of connection or in the provision of new capacity.

3.2 **Assets That May Be Utilized**

Jordan has sources of basic telecommunications transmission media that are presently not utilized for the provision of public telecommunications services. This exclusion is not economically efficient. However, it is necessary to determine at what point the making available of such assets and other rights for the ultimate provision of public services become licensable activities. TRC has determined that the following should apply:

- a) If the activities of owners of assets are restricted to the transfer, by means of a transaction with an unconnected third party, of an ownership interest in the asset or elements divided from the greater whole of the asset, no telecommunications license is required. Such assets could include, for example, unlit strands of fibre optic cable or so called 'dark fibre' This position applies notwithstanding that the party to whom the ownership interest is conveyed exploits the asset for the provision of telecommunications services and must accordingly be licensed.
- b) The simple grant of rights of way to third parties over, for example, poles, pylons, railways or land does not place the grantor in the position of providing a telecommunications service, notwithstanding the fact that the grantee may exploit the rights of way for the provision of telecommunications services and thus must be licensed.

3.3 **Premium Rate Services**

The provision of premium rate services will continue to be an activity that is not subject to license.

4 THE INTEGRATED REGIME TO BE FULLY IMPLEMENTED WITHIN 2006

The description of the 2005 licensing Program has made it clear that it will be consistent, in form, with the Integrated Licensing and Regulatory regime to be implemented having complied with relevant provisions of the Telecommunications Law and existing licenses.

Licensing under the true Integrated Regime will share the attributes of the 2005 Program in that it will not discriminate between types of service, sectors, technologies or infrastructures. The Regime will, therefore, by 2006, encompass JT and the licensees that hold licenses to provide various public mobile wireless services.

Under the Integrated Regime the provision of service will continue to be protected by Universal Service Obligations placed upon designated Universal Service Providers, the terms of which will accord with Government Policy. The obligation may in due time be associated with the establishment of a Universal Service Fund.

4.1 **Enables a Change of Approach to Market Regulation – Competition Assurance**

Once all licensees are brought within a common regime it will be possible for TRC to assure fair competition within the market through regulations that take an overall view of the supply of services rather than, as now, through enforcement of narrow license terms.

This regime will, within the limits of availability of scarce resources and normal safeguards free existing licensees to expand the scope of their business and allow all market entrants to innovate and compete on equal terms.

The details of regulation that will be required and the program for its development is set out in Section 5.

TRC considers the evolution to an Integrated Licensing and Regulatory regime to be a pivotal act for the optimal development of the telecommunications sector.

4.2 **Government Revenues**

It must clearly be the aim of an Integrated Regime that all licenses should have common terms. At the present time JT and the licensees that provide forms of public mobile wireless service, have, as a license term, the obligation to share revenue with Government.

The obligation upon JT ends at 31st December, 2004.

Revenue share will remain an obligation for the licensees that provide public mobile wireless services. .

الخدمات اللاسلكية

المتنقلة العامة

Under an Integrated Regime, revenue share that remains applicable and other arrangements will be preserved through specific Regulation.

Accordingly, Government revenue that remains applicable following the ending of the JT monopoly will be unaffected by the change of Regime and should not represent a factor in deliberation of the licensing Program.

5. ACTION PLAN

TRC has carefully considered its resources and drawn up detailed plans to enable it to meet the objectives. It will be necessary to supplement TRC resources for a period, in which time it will also build its capability. To these ends, donors have indicated their continued support for certain tasks and TRC has issued a tender for the supply of experienced consulting support for other defined tasks.

The necessary actions are illustrated within the diagram attached as Appendix 2.

When the Council of Ministers approves the Program of Licensing, TRC will take the following actions:

1. It will communicate with existing licensees, potential investors and market entrants and the public by publishing an information memorandum. This document will set out in detail the license application procedures and information requirements, criteria for approval or rejection of applications, and, provide the form of license. The document will also place the licensing scheme within the context of the earlier consultation paper published by TRC and the responses received to that paper.

2. Following publication, TRC will accept license applications. The TRC will grant licenses ,where appropriate, in order that market entrants may, if they wish, be operational at 1st January, 2005
3. TRC will continue the licensing process indefinitely. Applicants may accordingly apply for and receive licenses at any time according to due processes.
4. Early in 2005, TRC will initiate the formal processes, consultations and discussions necessary for the transition of the existing licenses of JT and the public mobile wireless licensees, and where necessary any remaining class licensees, to the Integrated Regime that will apply in 2006. It is open to any of the licensees to voluntarily transition licenses within 2005.
5. TRC will appoint consultants, in addition to those presently made available to the TRC, with the aim that these consultants both,
 - a) Assist TRC to develop the regulations that are necessary to the functioning of a fully competitive market and which further permit the introduction of an Integrated regime, and,
 - b) Assist TRC to enhance its knowledge and capabilities to a standard that is adequate to the operation of an Integrated Regime.
6. The introduction of Regulations that are listed, by time, within the diagram, are the subject of a highly detailed project plan, for which resources are, or will shortly be, in place. The sequence in which Regulations are put in place is particularly important. Regulations will only be introduced following open public consultation and within the bounds of the powers of the TRC under the Telecommunications Law.

7. In 2006 having complied with relevant provisions of the Telecommunications Law and existing licenses, all licenses will be brought within the Integrated Licensing and Regulatory regime that has been described in Section 4 of this document.

**Appendix 1 – Relevant paragraphs drawn from
the Statement of Government Policy on the
Information and Communications
Technology and Postal Sectors – published in
September, 2003**

- 37 “Government reaffirms that the monopoly status that is presently enjoyed by Jordan Telecom (JT) in certain key areas of telecommunications activity will cease at 31st December, 2004.
- 38 Government requires that the fixed sub-sector should be fully opened to competition in supply of services, at, or, as soon as is practically possible after 1st January, 2005.
- 39 Government requires that explicit proposals for further licensing within the sub-sector, and the associated license terms, application criteria and processes, be prepared by and published for consultation with public and private sector stakeholders. Publication to be as soon as is practicable but no later than 30th June, 2004. The final form of the proposed licensing programme shall be submitted to the Council of Ministers for deliberation. The appropriate decision will be taken within a period of two weeks from the date of its submission. The aim of this schedule is that applications for licenses may be made from September, 2004 onward.
- 40 Government requires that, within the limits of normal safeguards, security and technical limitation considerations, no restriction should be placed on the range or type of fixed services that should be licensed. However, Government further and specifically, requires that no viable technology be excluded from use in the provision of licensed services. In addition, where there is no objective case for licensing or regulation of any services that are introduced, Government will support the prerogative of the TRC, under the Law, to forbear from such action.

30

() ()

- 41 Government requires that competition to JT be from the private sector. In accord with WTO and other international commitments no unjustified impediments that relate to nationality of ownership, flows of capital and similar matters should be imposed upon potential entrants to the market.

- 42 Government requires that JT should respond transparently and constructively to the prospect and reality of competition.

- 43 Government requires that JT should be subjected to pro-active regulatory measures, and should, in the remaining period of its monopoly, honour all relevant elements of agreements that it has entered into with Government. The immediate focus of regulatory action must be upon the elimination of any identified anomalies or inappropriate pricing practices and excessive profitability in relation to individual services, and, the creation of an environment into which competition may be introduced at the appropriate time. Government further requires that where there is proven and substantive demand for a service falling within its monopoly, that JT be obliged to provide it, on fair and reasonable terms, whilst its monopoly prevails.

- 44 Government requires that when the monopoly of JT is ended that it continues to be subject to appropriate regulatory scrutiny and control, as it is likely to retain, for a period, dominance or significant market power in some areas.

- 45 Government requires that the regulatory regime that is to apply before and after the ending of the JT monopoly should be published, for the guidance of all stakeholders and potential entrants to the fixed sub-sector. Publication to be as soon as is practicable, but no later than 31st March, 2004.

46. The specific goals of this policy are:

- 47 The removal from the fixed sub-sector of the costs of monopoly inefficiency. This to be achieved, in the short term, through necessary regulatory action, and, subsequently the effects of open competition. Costs of monopoly can include supra-profitability of certain services and the distorting effects of cross-subsidy between services and elements within services. It is necessary that a position be rapidly reached where correct economic signals are sent to the market and thus appropriate alternative infrastructure investment is encouraged.
- 48 The enhancement from present levels of the scope, availability and quality of services, and, choice of service providers, made available in Jordan. It is necessary that fixed services available in Jordan at least match those of peer states. They are necessary to the development and growth of the economy and the meeting of government's social goals.
- 49 Particular goals, within the progressive development of the sub-sector, include but are not limited to; the introduction of alternative international services, alternative international capacity and gateways, the exploitation of new technologies, notably in the data communication area, and, the exploitation of technologies and systems that may be used for the provision of multiple services.
- 50 It is a goal, that, overall, the fixed telecommunications sub-sector supplies facilities and capacity upon which other sectors within ICT may add value in an innovative manner. These elements to be affordable to the user and profitable to the supplier."

Appendix 2: TRC Program Moving Forward

