

TELECOMMUNICATIONS REGULATORY
COMMISSION

VIRGIN ISLANDS

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

Formatted: Font: Arial

~~19 August~~ 1 July 2016

Reference Number: _____



Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Table of Contents

1	Introduction	<u>11</u>
2	Parties eligible to apply	<u>55</u>
3	Services to be provided	<u>88</u>
4	Spectrum fees	<u>101010</u>
5	Description of the award process	<u>111111</u>
6	Contents of the Application	<u>161615</u>
7	Conduct of the Applicants	<u>181817</u>
8	Evaluation of Applications	<u>202019</u>
9	Provisional award schedule	<u>262625</u>
10	Definition of terms	<u>272726</u>
	Appendix A: Draft Frequency Authorisation	<u>303028</u>
	Appendix B: Forms	<u>424239</u>
	Appendix C: Guidelines for submission	<u>565650</u>

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



1 Introduction

- 1.1 This document, together with its Appendices, is an Modified Invitation to Apply (“MITA”) for the award of spectrum lots in the 700 MHz, 1900 MHz and AWS-1 bands (the “Offered Spectrum”) for the provision of public mobile telecommunications services in the Virgin Islands (“VI”).
- 1.2 In August of 2015, the Commission issued the Invitation to Apply for a 700, 1900 and AWS-1 MHz Spectrum Award (“ITA”). Due to litigation in the High Court of the VI, the original Spectrum Award 2015 contemplated by the ITA was put on hold by the Telecommunications Regulatory Commission (“Commission”).
- 4.1.1.3 Following the oral judgment of 13 January 2016 and the order delivered by the High Court on 29 February, 2016 (“Order”), the Commission has modified the ITA to accommodate the terms of the Order in this MITA. The Commission gave notice of consultation with respect to the MITA on 26~~26~~ May 2016 and issued the consultation document and a draft of this MITA on 9 June 2016. The limited period for consultation was completed on 23 June 2016. The Commission published the report on the consultation and this MITA
- 4.2.1.4 Applicants are invited to submit an **Application** in accordance with the Rules as amended and contained in this MITA, for a quantity of spectrum within each frequency band of the Offered Spectrum.
- 4.3.1.5 An Applicant who has submitted a successful Application shall be awarded spectrum upon the grant of a Frequency Authorisation by the **Telecommunications Regulatory Commission** (~~the “Commission”~~).

Formatted: Font: Not Bold

Governing law

- 4.4.1.6 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.
- 4.5.1.7 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.
- 4.6.1.8 The language for communications between the Applicants and the Commission on all matters pertaining to the grant of Frequency Authorisations pursuant to this MITA shall be English.

The offered spectrum

- 4.7.1.9 The Commission intends to grant up to six (6) Frequency Authorisations to be used for the provision of public mobile telecommunications services in the VI. Each Frequency Authorisation will be for 15 years subject to the Successful Applicant continuing to hold a valid licence granted by the Commission for the operation of a telecommunications network providing public mobile telecommunications services in the Virgin Islands. If the

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

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Applicant’s licence expires within the term of Frequency Authorisations granted in this Award and is not renewed by the Commission, such Frequency Authorisations will expire at the same time as the Applicant’s licence.

4.81.10 The Frequency Authorisations will grant rights of use of the spectrum arranged in lots in each frequency band as described in ~~Table 1-1~~~~Table 1-1~~~~Table 1-1~~ (the “Offered purposes of providing public mobile telecommunications services in the VI.

Table 1-1: Spectrum lots to be awarded

Spectrum band	Lot category	Lot reference	Bandwidth	Frequency range
700 MHz	P	P1	2x6 MHz	698 MHz to 704 MHz paired with 728 MHz to 734 MHz
		P2	2x12 MHz	704 MHz to 716 MHz paired with 734 MHz to 746 MHz
		P3	2x11 MHz	746 MHz to 757 MHz paired with 776 MHz to 787 MHz
1900 MHz	Q	Q1	2x15 MHz	1865 MHz to 1880 MHz paired with 1945 MHz to 1960 MHz
AWS-1		Q2	2x15 MHz	1725 MHz to 1740 MHz paired with 2125 MHz to 2140 MHz
		Q3	2x15 MHz	1740 MHz to 1755 MHz paired with 2140 MHz to 2155 MHz

4.91.11 To the extent any operator is improperly using spectrum in any of the bands set out above, that spectrum must be cleared prior to the grant of a Frequency Authorisation as contemplated by this **MITA**.

4.101.12 The rights and obligations of the Authorisation Holder are set out in a Frequency Authorisation for the spectrum awarded in each band. The pro-forma **Frequency Authorisation** is included in this **MITA** at **Appendix A**.

4.111.13 By applying for spectrum lots, Applicants express their commitment to accept the terms of the Frequency Authorisation to be granted by the Commission (as set out in the pro-forma **Frequency Authorisation** included as **Appendix A**) for any or all of the lots for which they apply in accordance with these Rules.

4.121.14 Each Applicant shall be eligible for the award of at most one lot from the 700 MHz band (Category P) and one lot from the 1900 MHz and AWS-1 bands (Category Q).

Award method

4.131.15 Applicants shall submit Qualification Documentation and Additional Commitments as specified in Sections 5 and 6. The Commission shall assess the Qualification Documentation for compliance with the Rules. Only those Applicants with compliant Qualification Documentation shall qualify for the grant of Frequency Authorisations.

4.141.16 In the Qualification Documentation, Applicants shall express their order of preference for lots of interest in each lot category.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- i. By specifying their preference for any spectrum in the 700 MHz band, Applicants express their willingness to obtain a Frequency Authorisation for such Category P lots. Each Applicant that applies for Category P lots shall indicate which lots it would like in order of preferred lot on **Form E in Appendix B**;
- ii. By specifying their preference for any spectrum in the 1900 MHz or AWS-1 bands, Applicants express their willingness to obtain a Frequency Authorisation for such Category Q lots. Each Applicant that applies for Category Q lots shall indicate which lots it would like in order of preferred lot on **Form E in Appendix B** for each potential outcome of its application for Category P lots.
- iii. In this ITA preferences for lots expressed on Form E in Appendix B are referred to as "Bids".

[4.451.17](#) The Commission shall conduct the award of spectrum by comparative evaluation of the Additional Commitments of Qualified Applicants. The Additional Commitments extend the minimum service requirements required under the Frequency Authorisations for certain lots in the Award as outlined below.

[4.461.18](#) The Commission shall firstly determine the successful Applicants for Category P lots then determine the successful Applicants for Category Q lots.

[4.471.19](#) The award of Category P lots shall be by comparative evaluation of the Additional Commitments to determine a ranking of the Qualified Applicants that expressed a preference for Category P lots. The highest ranked Applicant will be awarded its first lot preference for Category P lots. The second highest ranked Applicant will be awarded its highest preference that has not already been awarded to another Applicant, and so on.

[4.481.20](#) The Additional Commitments of successful Applicants for Category P lots having lot references P2 and P3 shall become obligations of the Frequency Authorisation as detailed in Section 8.

[4.491.21](#) The award of Category Q lots shall be made according to the following sequence:

- i. Firstly to those Qualified Applicants that did not specify a preference for lots in the 700 MHz band
 - a) Where there is one such Applicant, it will be awarded its first lot preference for Category Q lots.
 - b) Where there are two or more such Applicants, the award of Category Q lots shall be by comparative evaluation of such Applicants' Additional Commitments to determine a ranking as described in section 8.
- ii. Secondly to the successful Applicant for lot P1.
- iii. Thirdly to the remaining successful Applicants for Category P lots. These will be awarded in reverse order of the ranking established in Rule [1.194.194.17](#).

[4.201.22](#) The first in the sequence described in Rule [1.214.214.19](#) will be awarded its first lot for Category Q lots. The second in the sequence will be awarded its highest preference that has not already been awarded to another Applicant, and so on.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



[4.241.23](#) The Additional Commitments of successful Applicants awarded Category Q lots according to Rule [1.214.211.19.i.b](#)) shall become obligations of the Frequency described in Section 8.

Amendments to the Award rules

[4.221.24](#) The Commission may suspend, postpone, modify or cancel the award of spectrum and this **MITA** at any time.

[4.231.25](#) In the event that the Commission changes the **MITA** within five (5) Working Days of the announced Application Submission Date, the Commission shall announce a revised Application Submission Date no earlier than five (5) Working Days from the date of the change.

[4.241.26](#) The Commission shall notify persons who have duly registered with the Commission in accordance with Section 5 of any subsequent changes to this **MITA**.

Disclaimer

[4.251.27](#) Each Applicant should obtain any necessary professional advice and conduct its own independent investigation, due diligence and analysis of all relevant facts and conditions, and of the terms and conditions of the **Draft Frequency Authorisation** attached at **Appendix A**.

[4.261.28](#) The Applicant shall bear all costs incurred by it and for it in connection with the preparation and submission of the Application. The Commission will not reimburse any such costs.

[4.271.29](#) This **MITA** is not an offer or undertaking, express or implied, by the Commission or by any other person to grant any Frequency Authorisation.

Construction of this document

[4.281.30](#) Unless otherwise specified, all terms used in the **MITA** are as defined in Section 10. Where a term is used that is not defined in Section 10 it shall have its natural meaning.

[4.291.31](#) Headings in this **MITA** are only for guidance and do not form part of it.

[4.301.32](#) The Rules set out in this **MITA** are binding. In addition, this document contains guidance to Applicants on several aspects of the award of spectrum in accordance with the process prescribed in this **MITA**. Such guidance is not binding and is set out in italics and within text boxes.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



2 Parties eligible to apply

Corporate entity and compliance

- 2.1 An Applicant shall be a legal entity incorporated in the VI. All references to “persons” in this ITA refer to such entities.
- 2.2 The Award is open to all persons who:
 - i. hold licences issued by the Commission for the provision of public telecommunications services and operate a public mobile telecommunications network in the VI; and
 - ii. at the time of Registration are in material compliance with the Act, their Licences, the Regulations, the Telecommunications Code and any instructions issued by the Commission, including without limitation, the delivery of all financial information and the payment of all fees, levies or royalty fees due to the Commission under their Licences or otherwise; OR have delivered legally binding Undertakings to the Commission at least two (2) Working Days prior to Registration, which have been ~~are~~ (a) agreed and signed by the Commission at least two (2) Working Days prior to Registration, (b) identify all areas of material non-compliance and provide a clear plan to address each area with deadlines which are consistent with the timetable for this award process, and (c) include acceptable guarantees of performance of their Undertakings; and
 - iii. meet the Qualification Criteria listed in Section 8.
- 2.3 Persons who do not comply with the requirements of Rules 2.2.i and 2.2.ii will not be allowed to register or to participate in any aspect of the Award as outlined in Section 5. Applicants shall present a certificate in the form set out in **Appendix B – Form F**, certified by an Authorised Person to demonstrate compliance with 2.2.ii.

Spectrum caps

- 2.4 In this MITA, the term **Existing Frequency Assignments** refers to any spectrum in the VI that had been assigned to the Applicant by the Commission following the enactment of the Telecommunications Act, 2006.
- 2.5 Applicants for whom the sum of their Existing Frequency Assignments across all spectrum below 1 GHz in bands identified by the International Telecommunications Union (ITU) for IMT Telecommunications Services and the quantity of spectrum in each bid for lots P1, P2 or P3 exceeds 60 MHz shall not be awarded such lots in the 700 MHz band unless they agree to the release of spectrum to the Commission from Existing Frequency Assignments such that the 60 MHz spectrum limit is not exceeded.
- 2.6 Applicants for whom the sum of their Existing Frequency Assignments across all spectrum in bands identified by the International Telecommunications Union (ITU) for IMT Telecommunications Services and the quantity of spectrum in each bid for lots P1, P2 or P3 exceeds 170 MHz shall not be awarded such lots in the 700 MHz band unless they agree to the release of spectrum to the Commission from Existing Frequency Assignments such that the 170 MHz spectrum limit is not exceeded.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- 2.7 Where Bids for 700 MHz band spectrum are compliant with Rules 2.5 and 2.6 and proposals for the release of spectrum where required are approved by the Commission, such bids are termed “Eligible 700 MHz Bids” in this ITA. Only Eligible 700 MHz Bids will be considered in the Evaluation of Applications stage of the Award.
- 2.8 Applicants for whom the sum of their Existing Frequency Assignments across all bands identified by the ITU for IMT Telecommunications Services and each Bid for lots Q1, Q2 or Q3 and the corresponding category P lot (if any) that corresponds to that category Q lot Bid exceeds 170 MHz shall not be awarded that category Q lot spectrum unless they agree to the release of spectrum to the Commission from Existing Frequency Assignments such that the 170 MHz spectrum limit is not exceeded.
- 2.9 Where Bids for 1900 MHz and AWS-1 band spectrum are compliant with Rule 2.8 and proposals for the release of spectrum where required are approved by the Commission, such bids are termed “Eligible 1900 MHz and AWS-1 Bids” in this MITA. Only Eligible 1900 MHz and AWS-1 Bids will be considered in the Evaluation of Applications stage of the Award.
- 2.10 Where an Applicant offers to release spectrum to comply with Rules 2.5 to 2.9 the specified spectrum to be released is subject to approval by the Commission. Applicants should note that such spectrum to be released should conform to duplex arrangements in the band, be contiguous as far as possible and be aggregated from the highest or lowest limit of their assignments in each frequency band. Applicants shall indicate the spectrum to be released in order of precedence in the event of each combination of their Bids being successful in the Award.
- 2.11 Where such approval is not granted, the Commission will request alternative offers from the Applicant as described in section 8.
- 2.12 Where an Applicant offers to release spectrum to comply with Rules 2.5 to 2.9, the Applicant shall commit to the termination of frequency rights in the frequency bands concerned and the acceptance of a new Frequency Authorisation 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 for the remaining spectrum held in that band. For the avoidance of doubt, no Frequency Authorisation will be granted unless and until such frequency rights have been terminated and the Applicant has vacated any usage of the relevant spectrum.

Ownership constraints

- 2.13 An Applicant may not have a Material Interest in any other Applicant or Affiliate of another Applicant.
- 2.14 An Applicant has a “Material Interest” in another Applicant where either the Applicant or any of its Affiliates:
- i. directly or indirectly holds or will hold ten per cent (10%) or more shares in the other Applicant; or
 - ii. may, by refusing their consent or acquiescence, prevent ten per cent (10%) or more of the votes entitled to be cast at a general meeting of the other Applicant from being cast; or

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- iii. directly or indirectly holds or will hold any shares in the other Applicant and has or will have the ability to appoint or remove one or more directors of the Applicant; or
- iv. may by rights, contracts or any other means, having regard to the considerations of fact or law involved, exercise decisive influence on the Applicant, in particular by ownership or the right to use all or part of the assets of any Applicant or any of its Affiliates, or rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

2.15 "Affiliate", in relation to a given Applicant is any person directly or indirectly controlling, controlled by or under common control with the Applicant where either the Applicant or that person owns, directly or indirectly at least fifty per cent (50%) or more of the share capital, voting rights, securities, partnership or other ownership of interest in the other person or in the Applicant as the case may be.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



3 Services to be provided

- 3.1 A Frequency Authorisation to be issued by the Commission shall require that successful Applicants use the spectrum granted to provide public mobile telecommunications services using IMT Telecommunications Technologies.
- 3.2 The Frequency Authorisations shall require authorisation holders to provide services in accordance with the **Telecommunications Code (Part 3) (Quality of Service), Requirements 2010**, as applicable.
- 3.3 Successful Applicants who are granted Frequency Authorisations for the use of spectrum shall meet the **Minimum Service Requirement** defined in the Frequency Authorisation.

Guidance for Applicants – Minimum Service Requirements

The Authorisation Holder shall provide using the Authorised Spectrum, and thereafter maintain, a telecommunications network that is capable of providing to users:

- *within 12 months of the Date of Issue*
- *to at least 90% of the population of each of the islands of Tortola, Anegada, Jost Van Dyke and Virgin Gorda*
- *where the Frequency Authorisation includes spectrum in the 700 MHz band to at least 95% of the population of each of the islands of Tortola, Anegada, Jost Van Dyke and Virgin Gorda*
- *a mobile telecommunications service with a sustained downlink speed of not less than 2 megabits per second when that network is lightly loaded*
- *at 90% of locations within any area of 100m by 100m.*

For the purpose of this Minimum Service Requirement, a network is considered 'lightly loaded' if it has a single user demanding service within the serving cell, and the surrounding cells of the network are loaded to a light level (by which is meant the common channels only are transmitting at 22% of the maximum cell power).

Applicants are advised to scrutinise the draft Frequency Authorisation at Appendix A for a more detailed description of minimum service requirements. The requirements stated in the Frequency Authorisation shall take precedence where different to the description stated in this Guidance.

- 3.4 The Commission will assess the Applicant's intent and ability to meet the Minimum Service Requirements by assessment of a **Network Deployment Plan** submitted by the Applicant as part of its **Qualification Documentation**. The Network Deployment Plan will be attached to, and referenced by, Frequency Authorisations granted in this Award.
- 3.5 Where a Network Deployment Plan is attached to a Frequency Authorisation, the Authorisation Holder shall deploy, and thereafter maintain, its network incorporating as a minimum the cell sites with the configuration defined in the Network Deployment Plan.
- 3.6 The Network Deployment Plan will only be varied with the written approval of the Commission, and such approval is not to be unreasonably withheld. Such approval will

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



only be granted where the proposed changes are capable of meeting the minimum service requirements.

- 3.7 For the avoidance of doubt, compliance with Rule 3.6 does not absolve the Authorisation Holder from the need to satisfy the Minimum Service Requirements defined in the Frequency Authorisation.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



4 Spectrum fees

Registration fees

- 4.1 Persons who wish to submit an Application in response to this **MITA** are required to first register with the Commission by the completion and submission of **Form A** in **Appendix B** by the Final Registration Date identified in ~~Table 9-1~~~~Table 9-1~~~~Table 9-1~~. A is payable to the Commission upon registration, by cheque. Provided, however, that if a person registered with the Commission and submitted an Application in accordance with the ITA, the Registration Fee under this MITA shall be waived.
- 4.2 The Commission shall not consider an Application submitted by a person who has not registered with the Commission in accordance with Rule 4.1 above.

Annual Authorisation Fees

- 4.3 A Frequency Authorisation shall include the obligation of the authorisation holder to pay annual Spectrum Fees from the date of issue of the Frequency Authorisation.
- 4.4 The Commission proposes to charge the following annual Spectrum Fees defined in ~~Table 4-1~~~~Table 4-1~~~~Table 4-1~~ for each band within the Offered Spectrum.

Table 4-1: Annual spectrum fees for the offered spectrum

Spectrum band	Lot reference	Bandwidth	Annual spectrum fees
700 MHz	P1	2x6 MHz	US\$ 1400 / MHz
	P2	2x12 MHz	US\$ 1400 / MHz
	P3	2x11 MHz	US\$ 1400 / MHz
1900 MHz	Q1	2x15 MHz	US\$ 1400 / MHz
AWS-1	Q2	2x15 MHz	US\$ 1400 / MHz
	Q3	2x15 MHz	US\$ 1400 / MHz

- 4.5 The fees identified in ~~Table 4-1~~~~Table 4-1~~~~Table 4-1~~ may be amended by the Commission from time to time.
- 4.6 Annual Spectrum Fees will be payable to the Commission each year upon the anniversary of the date of award of each Frequency Authorisation. The first payment of the Authorisation Fees shall be payable from the date of the award of Frequency Authorisations

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



5 Description of the award process

Stages of the award process

- 5.1 The award process shall comprise the five stages described in this ITA:
- i. Registration
 - ii. Question and answer process
 - iii. Submission of Applications
 - iv. Evaluation of Applications
 - v. Grant of Frequency Authorisations
- 5.2 Each of these stages is described below in detail.

Registration

- 5.3 A person wishing to ask questions about this ITA or to submit an Application shall register with the Commission. Registration is conditional upon:
- i. the person delivering to the Commission the duly completed Registration Form (Form A in Appendix B to this MITA) and Compliance Certificate (Form F in Appendix B to this MITA), by the Final Registration Date identified in Table and
 - ii. agreed Undertakings agreed and signed in advance of Registration in accordance with the provisions of Rule 2.2.ii., where required to achieve material compliance as specified in Rule 2.2.ii; and
 - iii. if applicable, payment of the Registration Fee specified in Section 4, such payment being duly received by the Commission, in advance of the Application Submission Date.
- 5.4 Upon completion of the registration process outlined in Rule 5.3 above, the Commission shall send a unique reference to a fax number submitted by the registered person. This reference should be quoted in all subsequent correspondence between the Commission and the registered person.
- 5.5 A person who is registered with the Commission may opt not to submit an Application in response to this MITA. However, the Commission shall not consider requests for clarifications and shall reject all proposals submitted by persons who have not duly registered with the Commission in accordance with Rule 5.3.
- 5.6 Completed Registration Forms and Compliance Certificates shall be submitted to the Commission at:

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Postal address:

**Telecommunications Regulatory Commission,
P.O. Box 4401
Road Town, Tortola VG1110
British Virgin Islands**

Physical address:

**Telecommunications Regulatory Commission
27 Fish Lock Road
LM Business Centre 3rd Floor
Road Town, Tortola VG1110**

Requests for Clarification

- 5.7 Persons who have duly registered with the Commission may submit Requests for Clarification to the Commission by email, fax or post regarding the ITA, the Award process or the terms of the Frequency Authorisation. The Final Date for the submission of Requests for Clarification will be as specified in [Table 9-1](#)~~Table 9-1~~[Table 9-1](#).
- 5.8 The Commission shall respond to all Requests for Clarification received on or before the Final Date for Requests for Clarification specified in [Table 9-1](#)~~Table 9-1~~[Table 9-1](#). The not respond to Requests for Clarification received after the Final Date for Requests for Clarification.
- 5.9 The Commission shall send its responses by e-mail to all persons who have duly registered with the Commission. Where the Commission considers that a Request for Clarification or the response from the Commission necessarily entails the disclosure of information that is confidential to a person, the Commission may, in its discretion, either re-phrase the Request for Clarification and or the response so as to remove all reference to the confidential information or exclude the specific Request for Clarification and or the response from the responses sent to all persons who have registered with the Commission.
- 5.10 Should the Commission amend the MITA, including the Appendices, it will publish the revised MITA on the Website and email and post notices to that effect to each person duly registered with the Commission.
- 5.11 Contact information for the submission of Requests for Clarification to the Commission as specified in Rule 5.7 above are as follows:
E-mail - gnelson@trc.vg
Fax – (284) 494-6786

Submission of Applications

- 5.12 Applications shall be submitted on the **Application Submission Date** in accordance with the **Delivery Instructions** set out at Rules [5.145-146-13](#) to [5.195-17](#) inclusive. The may reject Applications not delivered in accordance with the Delivery Instructions. Applicants shall be bound by their respective Applications until the **Frequency Authorisation Grant Date** specified in [Table 9-1](#)~~Table 9-1~~[Table 9-1](#).

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



5.425.13 In the event that an Applicant submitted an Application in accordance with the Rules of the ITA on 30 September 2015, the Applicant may choose to (i) reaffirm the Qualification Documentation and Additional Commitments that it submitted under the ITA; OR (ii) reaffirm the Qualification Documentation and submit amended Additional Commitments; OR (iii) submit amended Qualification Documentation and amended Additional Commitments; OR (iv) submit amended Qualification Document and reaffirm Additional Commitments.

5.435.14 An Application shall comprise complete **Qualification Documentation** and **Additional Commitments** prepared in accordance with Section 6.

5.445.15 An Application shall be delivered by hand to the physical address of the Commission as identified in Rule 5.6, for which the Commission shall issue a receipt.

5.455.16 The Application Submission Date shall be as specified in Table 9-1Table 9-1Table 9-1. may amend any of the dates specified in Table 9-1Table 9-1Table 9-1 by notice to the same mode/s of advertisement by which this MITA was advertised.

5.465.17 Subject to Section 5.13 above, The Qualification Documentation and Additional Commitments or reaffirmation, as applicable, shall be submitted simultaneously. The Qualification Documentation and Additional Commitments shall be placed in sealed non-transparent envelopes and shall comply with the following directions:

i. Envelope containing the Qualification Documentation:

- a) This envelope should be labelled as follows: “[Applicant name and registration reference]: Qualification Documentation for the Award of Frequency Authorisations in the VI. Not to be opened before [Application Submission Date (hh.mm, mmm dd, yyyy)].”
- b) The envelope containing the Qualification Documentation should contain the following:
 - one (1) original Qualification Documentation. This should be clearly marked: “Original”;
 - five (5) copies of the Qualification Documentation. These should be clearly marked: “Copy No. 1 of 5” and so on.
 - a copy of the Qualification Documentation on a readable means of storage such as CD-ROM, Flash memory card, or USB Drive in a format readable by a Microsoft Office Professional Edition 2003 program or be in Adobe Acrobat (.pdf) format. This should include electronic versions of all coverage plots. The storage device should be clearly marked with the Applicant’s name and registration reference.

ii. Envelope containing the Additional Commitments:

- a) This envelope should be labelled as follows: “[Applicant name and registration reference]: Additional Commitments for the Award of Frequency Authorisations in the VI. Not to be opened before [Application Submission Date (hh.mm, mmm dd, yyyy)].”
- b) The envelope containing the Additional Commitments should contain the following:

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- one (1) original Additional Commitments. This should be clearly marked: “Original”;
- five (5) copies of the Additional Commitments. These should be clearly marked: “Copy No. 1 of 5” and so on.
- a copy of the Additional Commitments on a readable means of storage such as CD-ROM, Flash memory card, or USB Drive in a format readable by a Microsoft Office Professional Edition 2003 program or be in Adobe Acrobat (.pdf) format. This should include electronic versions of all coverage plots. The storage device should be clearly marked with the Applicant’s name and registration reference.

5.18 Applications and Reaffirmation Certificates shall be submitted between the hours of **10.00 and 15.30** on the **Application Submission Date**. The Commission shall issue a receipt to the Applicant upon receipt of its Application. The Commission shall not accept and shall return unopened all Applications submitted otherwise than in accordance with these Rules. The issue of a receipt by the Commission does not mean that the Commission is bound to consider an Application that has not been delivered in accordance with these Rules.

5.175.19 Reaffirmation Certificates shall be in the form set out in Appendix B, Form G. If an Applicant has chosen to amend the Qualification Documentation and/or Additional Commitments as permitted in Section 5.13 above, it shall comply with the requirements set out in Section 5.17 above.

Evaluation of Applications

5.185.20 The Commission shall evaluate Applications which have been submitted in accordance with the Rules contained in this MITA and which have not been rejected by the Commission in accordance with the process outlined in Section 8.

5.195.21 The Commission’s Executive will make a recommendation to the Board of the Commission regarding the successful Applicants and the Frequency Authorisations to be granted. The Commission Board shall decide whether to accept the recommendation.

5.205.22 The Board of the Commission will notify and advise the Minister for Communications and Works of their decision in advance of notification to Applicants.

Grant of Frequency Authorisations

5.215.23 Subject to successful Applicants being in compliance with the Rules of this ITA, their agreed Undertakings and completion of spectrum release as described in Rule 2.12, the Commission shall award spectrum to successful Applicants by the grant of Frequency Authorisations on the **Frequency Authorisation Grant Date** identified in Section 9.

5.225.24 Where successful Applicants are not in compliance with their agreed Undertakings or failed to comply with spectrum release requirements described in Rule 2.12, the Applicant shall be disqualified from the Award process and the Evaluation of Applications shall be repeated without that Applicant’s Bids being considered.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



6 Contents of the Application

- 6.1 An Application shall comprise each of:
- i. The **Qualification Documentation**: comprising all of:
 - **Registration reference** issued by the Commission evidencing that the Applicant has already registered with the Commission; and
 - Completed **Application Forms B to F** and attachments; and
 - A network Deployment Plan or Form G
- and
- ii. **Additional Commitments.**
- 6.2 The Qualification Documentation and Additional Commitments shall comply with the delivery requirements of Rules 5.145-145.13 to 5.195-17 inclusive.

Qualification Documentation

- 6.3 The Qualification Documentation shall include completed **Forms B to F or G, as applicable**, which are included at **Appendix B** to this ITA. Guidance on the completion of Forms B to F is included in the forms themselves.
- 6.4 Where required to comply with the spectrum caps specified in Rules 2.4 to 2.12 for any combination of spectrum applied for, the Qualification Documentation shall include a Spectrum Release Plan detailing the spectrum from Existing Frequency Assignments to be released for any combination of spectrum that may be granted in the Spectrum Award 2015. The Spectrum Release Plan shall include the earliest date by which such spectrum can be released and justification for such date if later than the Frequency Authorisation Grant Date detailed in Section 9.
- 6.5 The Applicant's Qualification Documentation shall include a **Network Deployment Plan** that demonstrates how the Applicant plans to meet the minimum service requirements of the Frequency Authorisation. This shall include, at a minimum:
- i. a description of its **proposed rollout strategy**, including its plans to meet the minimum service requirements included in the Frequency Authorisation; and
 - ii. a description of its **proposed deployment of technology** including details of assumed link budget, antenna and RF assumptions and allowance for propagation and fading losses; and
 - iii. a list of site locations to be used and coverage maps to illustrate the expected coverage; and
 - iv. evidence to show that the depicted coverage is likely to achieve the required population coverage.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Additional Commitments

- 6.6 Each Applicant shall include Additional Commitments in support of its Application or shall include in its Reaffirmation Certificate that the Applicant confirms that the Additional Commitments submitted to the Commission with its Application on September 30, 2015 shall continue as its Additional Commitments in this Spectrum Award 2016. An Applicant that does not (i) submit Additional Commitments or (ii) does not reaffirm its previously submitted Additional Commitments, as applicable, will not be eligible for grant of a Frequency Authorisation.
- 6.7 Additional Commitments shall include commitments that the Applicant is prepared to undertake if granted spectrum in the Award. Additional Commitments shall include commitments relating to:
- i. Rollout and coverage;
 - ii. Services offered and quality of service²;
 - iii. Performance guarantees;
 - iv. Quality of the business plan; and
 - v. Competitiveness and consumer benefit.

Guidance on how the Commission intends to evaluate the Additional Commitments is given in Appendix C

- 6.8 All documentation included in the Additional Commitments shall be included within the Additional Commitments envelope. Documentation that is not included within the Additional Commitments envelope will not be considered part of the Additional Commitments.

Authorisation of forms

- 6.9 In all cases an original signature of an Authorised Person is required on each page of Forms B-E and G from an Authorised Person whose notarised signature has been included as part of **Form C**. The signatures on all these forms will then be compared to the notarised copies in order that their authenticity can be confirmed.
- 6.10 Electronic signatures will not be accepted. All the original versions of the forms shall therefore be printed and signed by hand in blue ink. It is permissible to include photocopied signatures in the forms included in the copies of the Qualification Documentation (i.e., those copies marked "Copy No. 1 of 5" and so on).

² [The Commission considers it is in the public interest that services offered and quality of service \(including download data rates\) remains in line with technology developments and international best practice.](#)

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



7 Conduct of the Applicants

- 7.1 The Applicant shall comply at all times with these Rules.
- 7.2 Applicants shall notify the Commission of any material change to the information provided and/or any representation made in the Qualification Documents that occurs prior to the Frequency Authorisation Grant Date, including but not limited to any change to the composition of the Board of Directors of the Applicant or any matter which may affect the continuing validity of any declarations made in **Form D** and **Form F** and Form G (as applicable), by no later than Three (3) Working Days before the Frequency Authorisation Grant Date, except if the change occurred later than three (3) days before the Frequency Authorisation grant date but before the Frequency Authorisation date in which case the applicant shall notify the Commission of such change forthwith.
- 7.3 The Applicant shall not and shall ensure that none of its Affiliates or any of its or their directors or employees:
- i. submits to the Commission any information in connection with the award process which is either false or deliberately misleading;
 - ii. submits more than one Application;
 - iii. collude or attempt to collude with another person to distort the outcome of the award process;
 - iv. at any time act in a way which is likely to distort the outcome of the award process;
 - v. at any time disclose, or attempt to disclose, or incite another person to disclose, Confidential Information, whether directly or indirectly, to any person except where the disclosure is:
 - to a professional adviser for the purpose of and to the extent necessary to prepare its Application and subject to such adviser entering into a non-disclosure agreement on terms no less onerous than those in this Section 7.
 - to the Commission;
 - for the purpose of raising finance for a bid and to a provider of finance.
- 7.4 An Applicant shall notify the Commission as soon as is reasonably practicable if it has evidence or has reasonable grounds to suspect that:
- i. an Applicant has or may have breached these Rules; or
 - ii. any of an Applicant's Affiliates, or any of their directors or employees has acted in a way which would have breached these Rules had they been the Applicant.
- 7.5 The Commission shall have the discretion to disqualify an Applicant if, in the opinion of the Commission, the outcome of the Award would or could be materially affected because:
- i. The Applicant has breached these Rules; or
 - ii. Any of its Affiliates or any of their directors or employees has acted in a way which would breach these Rules had they been the Applicant; or

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- iii. The Applicant has a Material Interest in another Applicant; or
 - iv. The Applicant has not complied with its agreed Undertakings or failed to comply with spectrum release requirements described in Rule 2.12.
- 7.6 Where the Commission believes that there is good reason to disqualify an Applicant, the Commission may, at its sole discretion, permit the Applicant to address the disqualifying factor or may exempt the Applicant from the obligation.
- 7.7 The criteria the Commission shall use in assessing whether to grant an exemption under Rule 7.6 are, that such exemption:
- i. would not diminish the promotion of effective and fair competition among new and existing licensed operators; and
 - ii. would promote the interests of subscribers and users of the relevant telecommunications services.
- 7.8 Interested parties are not permitted to solicit or receive advice on matters related to this ITA or to the award of spectrum pursuant to these Rules from:
- (a) any person who has been retained as an adviser to the Commission (or a sub-contractor to such adviser) in relation to the Award. Advisers to the Commission in this regard are:
 - i. Plum Consulting London LLP
 - ii. Pensa Consulting LTD
 - iii. Stephanie Liston
 - (b) any person who has been an employee of the Commission or any of the above advisers in the six (6) months prior to the publication date of this ITA.
- 7.9 For the avoidance of doubt, Rule 7.8 shall not apply to the receipt of responses to Applicants' Requests for Clarification in accordance with these Rules, regardless of whether such responses are given by the Commission directly or by the Commission's advisers.



8 Evaluation of Applications

Evaluation of the Qualification Documentation

- 8.1 During the process of the evaluation of Applications, the Commission may address any requests for clarification to the Principal Authorised Person identified by the Applicant in **Form B**. Applicants shall respond to any requests for clarification within the time frame specified by the Commission. If the Applicant fails to respond within the time frame specified by the Commission, the Commission may proceed to evaluate the Application in the absence of such clarification and has the discretion to disqualify the Applicant from the Award. All clarifications provided by Applicants in response to requests from the Commission shall be signed by one of the Applicant's Authorised Persons and shall include its registration reference.
- 8.2 The qualification process will comprise the Commission's assessment as to whether the Qualification Criteria have been satisfied. The Qualification Criteria are as follows:
- i. The Application is compliant with these Rules;
 - ii. The Applicant is eligible to apply in accordance with the criteria set out in Section 2;
 - iii. The Applicant has no Material Interest in another Applicant;
 - iv. The Network Deployment Plan is considered adequate by the Commission.
- 8.3 Following receipt of Qualification Documentation, the Commission shall publish a list of Applicants, including, where relevant, the Affiliates of each Applicant.
- 8.4 As soon as reasonably possible following the publication by the Commission of the list of Applicants and, in any event, no later than two (2) Working Days following publication, each Applicant shall submit a declaration to the Commission stating whether or not it has a Material Interest in any other Applicant.
- 8.5 Where the Commission deems the submitted Network Deployment Plan to be of a standard unlikely to deliver the minimum service requirements stipulated in the Frequency Authorisation, the Commission will indicate to the Applicant in what respect the Network Deployment Plan is deficient and the Applicant will be given three (3) days to resubmit its Network Deployment Plan for re-assessment by the Commission.
- 8.6 Where the Commission deems the submitted spectrum release plans for compliance with Rules 2.5 to 2.9 to be either of insufficient quantity or not consistent with good spectrum management practice or having a proposed release date that is not justified in the opinion of the Commission, the Commission will indicate to the Applicant in what respect the spectrum release plans are deficient and the Applicant will be given two (2) days to resubmit its spectrum release plans for re-assessment by the Commission. The Commission will only consider a spectrum release date later than the Frequency Authorisation Grant Date where this is required to alleviate significant consumer harm.
- 8.7 Where the Commission considers that an Applicant has satisfied the Qualification Criteria, the said Applicant will be added to the list of Qualified Applicants.
- 8.8 Where an Applicant is deemed by the Commission to have failed to comply with the Qualification Criteria, the said Applicant will be disqualified from the Award.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- 8.9 Upon the receipt of declarations by Applicants, as required by Rule 8.4 and completion of Qualification Documentation, the Commission shall individually notify each Qualified Applicant that its Application is eligible for consideration for the award of spectrum and the Eligible 700 MHz Bids and Eligible 1900 MHz and AWS-1 Bids from those indicated on its Form E. The Commission shall also publish a list of Qualified Applicants.
- 8.10 The Commission shall also notify any Applicant whose Application has been rejected or disqualified. The Commission shall return unopened the Additional Commitments of Applications that are not Qualified Applicants to the Postal Address of the Principal Authorised Person of the unsuccessful Applicants, as specified by the Applicant in Form B.

Evaluation of Additional Commitments

- 8.11 The Commission shall assess the Additional Commitments submitted by the Applicant to determine an Additional Commitments Score from 0 to 100 according to the Additional Commitment Criteria listed in the table below.

Additional Commitment Criteria	Maximum Score
Rollout and coverage	25
Services offered and quality of service	25
Performance guarantees	20
Quality of the business plan	15
Competitiveness and consumer benefit	15

Guidance on how the Commission intended to evaluate the above criteria is given in Appendix C

- 8.12 An Applicant that does not submit Additional Commitments or reaffirm its Additional Commitments by completing Form G will not be eligible for grant of a Frequency Authorisation.
- 8.13 An Applicant that obtains a Score of zero for its Additional Commitments will not be eligible for assignment of any spectrum lots offered in this award.

Award of spectrum in the 700 MHz band

- 8.14 The Commission shall determine the successful Applicants for spectrum lots in the 700 MHz band by following the process detailed in Rules 8.15 to 8.18.
- 8.15 Only Qualified Applicants that indicate a preference for Category P lots on Form E in Appendix B will be eligible for assignment of 700 MHz lots.
- 8.16 The Commission will rank the Qualified Applicants that indicated a preference for Category P lots according to the Additional Commitments Scores. The Applicant with the highest Score will be ranked first, the Applicant with the second highest Score will be ranked second and so on.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- 8.17 The Commission will determine the successful Applicants for Category P lots by considering each Applicant in order of ranking. Each Applicant will be awarded the lot having its highest preference from Eligible 700 MHz Bids that has not already been awarded to another Applicant.
- 8.18 The Additional Commitments relating to Rollout and coverage, Services offered and quality of service and Performance guarantees will become obligations of the Frequency Authorisation for lots P2 or P3 if either of such lots is granted to the Applicant.

Award of spectrum in the 1900 MHz and AWS-1 bands

- 8.19 The Commission shall determine the successful Applicants for spectrum lots in the 1900 MHz and AWS-1 bands by following the sequence of steps detailed in Rules 8.20 to 8.25.
- 8.20 Only Qualified Applicants that indicate a preference for Category Q lots on Form E in Appendix B will be eligible for assignment of spectrum in the 1900 MHz and AWS-1 bands.
- 8.21 Where a single Qualified Applicant that indicated a preference for Category Q lots is not awarded Category P lot, that Applicant will be assigned a Category Q lot first.
- 8.22 Where there are two or more Applicants that indicated a preference for Category Q lots and do not win a Category P lot, an Assignment Sequence amongst such Applicants will be established by the Commission using their Additional Commitments Scores. The highest Additional Commitments Score from such Applicants will be assigned a Category Q lot first. The second highest Additional Commitments Score from such Applicants will be assigned a Category Q lot second, and so on.
- 8.23 For assignments under Rules 8.21 and 8.22, the Category Q lot that is first listed alongside "No Category P lot" from Eligible 1900 MHz and AWS-1 Bids on the Applicant's submitted Form E and has not already been assigned to another Applicant will be awarded to each Applicant according to the Assignment Sequence. In this situation, the Additional Commitments relating to Rollout and coverage, Services offered and quality of service and Performance guarantees will become obligations of the Frequency Authorisation for lots granted to such Applicants.
- 8.24 The Commission shall award to the successful Applicant of lot P1, the Category Q lot from Eligible 1900 MHz and AWS-1 Bids that is first listed alongside P1 on Form E and has not already been assigned to another Applicant.
- 8.25 The Commission shall award to the remaining successful Applicants of Category P lots in reverse order of ranking, their most preferred Category Q lot indicated alongside their winning Category P lot from Eligible 1900 MHz and AWS-1 Bids on Form E that has not already been awarded to another Applicant.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Guidance for Applicants – Example of the award process

Example 1

Bidder A, Bidder B and Bidder C are Qualified Applicants that indicated the following preferences.

Category P preferences

Bidder	Category P preference			Additional Commitments score
	1 st	2 nd	3 rd	
Bidder A	P1	P2	P3	70
Bidder B	P3	P1	P2	80
Bidder C	P1	P3	P2	60

Category Q preferences

Bidder	Lot P1 awarded			Lot P2 awarded			Lot P3 awarded			No Category P lot		
	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd
Bidder A	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder B	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder C	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1

Award process

The ranking of bidders according to Additional Commitments Score is Bidder B, Bidder A, Bidder C. Therefore:

- Bidder B will be awarded P3
- Bidder A will be awarded P1
- Bidder C will be awarded P2.

The Assignment Sequence for Category Q lots will be Bidder A (as winner of P1), then Bidder C and Bidder B (reverse order of ranking). Therefore:

- Bidder A will be awarded Q1
- Bidder C will be awarded Q2
- Bidder B will be awarded Q3.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Guidance for Applicants – Example of the award process

Example 2

Bidder A, Bidder B and Bidder C are Qualified Applicants that indicated the following preferences.

Category P preferences

Bidder	Category P preference			Additional Commitments score
	1 st	2 nd	3 rd	
Bidder A	P1	P2	P3	70
Bidder B	P1	P3	P2	80
Bidder C	P1	P3		60

Category Q preferences

Bidder	Lot P1 awarded			Lot P2 awarded			Lot P3 awarded			No Category P lot		
	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd
Bidder A	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder B	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder C	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1

Award process

The ranking of bidders according to Additional Commitments Score is Bidder B, Bidder A, Bidder C. Therefore:

- Bidder B will be awarded P1
- Bidder A will be awarded P2
- The remaining Category P lot is not awarded because Bidder C did not express a 3rd preference.

Bidder C is first to be awarded a Category Q lot since it was not awarded a Category P lot. Then Bidder B (as winner of P1) and then Bidder A. Therefore:

- Bidder C will be awarded Q3
- Bidder B will be awarded Q1
- Bidder A will be awarded Q2.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Guidance for Applicants – Example of the award process

Example 3

Bidder A, Bidder B and Bidder C are Qualified Applicants that indicated the following preferences.

Category P preferences

Bidder	Category P preference			Additional Commitments score
	1 st	2 nd	3 rd	
Bidder A	P1	P2	P3	70
Bidder B				80
Bidder C				60

Category Q preferences

Bidder	Lot P1 awarded			Lot P2 awarded			Lot P3 awarded			No Category P lot		
	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd	1 st	2 nd	3 rd
Bidder A	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder B	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1
Bidder C	Q1	Q2	Q3	Q1	Q2	Q3	Q1	Q2	Q3	Q3	Q2	Q1

Award process

The ranking of bidders according to Additional Commitments Score only includes Bidder A since Bidders B and C did not express a preference. Therefore:

- Bidder A will be awarded P1
- The remaining Category P lots are not awarded

The Assignment Sequence for Category Q lots will be established for Bidders B and C according to Additional Commitments Scores. Bidder A will be the last to be awarded a Category Q lot. Therefore:

- Bidder B will be awarded Q3
- Bidder C will be awarded Q2
- Bidder A will be awarded Q1.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



9 Provisional award schedule

- 9.1 A provisional timetable is presented in ~~Table 9-1~~~~Table 9-1~~~~Table 9-1~~. Times in the table the VI. The Commission reserves the right to amend the list of Award Events and/or the dates and or times of any Award Event by publication on the Website and by notice to each person who has registered with the Commission pursuant to Rule 5.3 above prior to such change coming into effect. For the avoidance of doubt, Frequency Authorisations will only be made to operators who are in compliance with their Undertakings.

Table 9-1: Timetable for the award process

Award events	Date and time
MITA issued	19th August 2015 <u>1 July 2016</u>
Deadline for Requests for Clarification	15:30 on <u>8 July 2016</u> 14th September 2015
Deadline for Registration	15:30 on <u>8 July 2016</u> 14th September 2015
Final Date for Responses to Requests for Clarification	<u>15 July 2016</u> 24th September 2015
Deadline for Application Submission	15:30 on <u>22 July 2016</u> 30th September 2015
Successful Applicants Notification Date	<u>12 August 2016</u> 23rd October 2015
Frequency Authorisation Grant Date	<u>19 August 2016</u> 30th October 2015 — subject to compliance with the Rules and agreed Undertakings.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



10 Definition of terms

10.1 Terms used in this ITA shall have the meaning defined in [Table 10-1](#)

Table 10-1: Definition of terms

Term	Meaning
Additional Commitments	The commitments made by the Applicant that are associated with each lot for which the Applicant has expressed a preference.
Annual Frequency Authorisation Fee	The annual spectrum fees payable to the Commission for the use of spectrum authorised by a Frequency Authorisation granted by the Commission in accordance with this ITA and as amended by the Commission from time to time.
Affiliate	Shall be as defined in Rule 2.15.
Application	An offer (comprising Qualification Documentation and Additional Commitments as required by the Rules) submitted by an Applicant for the award of spectrum from the Offered Spectrum in accordance with the MITA.
Applicant	A legal entity incorporated in the VI that submits an Application in response to this MITA.
Award	The procedure set out in this MITA by which the Commission intends to grant Frequency Authorisations to award and authorise the use of spectrum in the 700 MHz, 1900 MHz and AWS-1 bands.
Award Rules	The rules for the Award as set out in this MITA including the Appendices and forms referenced by these rules and any amendments issued by the Commission in accordance with Rule 1.251-251-23 .
Authorisation Holder	The person or organisation to whom a Frequency Authorisation will be granted by the Commission in accordance with this Award.
Authorised Person	An individual named by the Applicant who is authorised to act on behalf of the Applicant in all matters relating to the Award.
Application Submission Date	The date identified in Table 9-1 Table 9-1 Table 9-4 which is the last date of submission for Applications in response to this ITA.
VI	The British Virgin Islands and its territorial waters
Commission	The Telecommunications Regulatory Commission of the VI
Confidential Information	Any information that is not in the public domain and which, if it were made public, or disclosed to another actual or potential Applicant, would be likely to affect the decisions that such Applicant might make in relation to the Award process.
Delivery Instructions	The instructions set out in Rule 5.145-145-13 to Rule 5.475-19 .
Existing Frequency Assignments	The spectrum allocated to public mobile telecommunications services which has already been assigned to an Applicant either by the grant of a Frequency Authorisation under the Telecommunications Act, 2006 or by the Government of the VI before the Telecommunications Act, 2006 came into effect.
Frequency Authorisation	The legal instrument which authorises the use of spectrum within a frequency band under the Telecommunications Act, 2006.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Term	Meaning
IMT Telecommunications Services	Subject to such definition that may be published from time to time by the International Telecommunications Union, such telecommunications services that may be provided utilising those systems, system components and related aspects of International Mobile Telecommunications as defined by the International Telecommunications Union.
ITA	<u>This</u> Invitation To Apply for the award of spectrum and grant of Frequency Authorisations as defined in <u>the Invitation to Apply which was published by the Commission on 19 August 2015</u> this document including all appendices <u>thereto</u> .
Licence	A licence granted by the Commission for the provision of telecommunications services to the public and for the operation of a public mobile telecommunications network in the VI in accordance with the Act.
Lots	Discrete packages of spectrum within the Offered Spectrum for which Frequency Authorisation may be granted to Applicants.
Material Interest <u>MITA</u>	Shall be as defined in Rule 2.14. <u>This Invitation to Apply for the award of spectrum and grant of Frequency Authorisations as defined in this document including all appendices.</u>
Network Deployment Plan	A part of the Qualification Documentation as defined in Rule 6.5 that demonstrates compliance with the Minimum Service Requirements stipulated in the Frequency Authorisation.
Offered Spectrum	The spectrum lots in the 700 MHz, 1900 MHz and AWS-1 bands for which Frequency Authorisations may be granted in the Award process.
Payment Instructions	The instructions for payment set out in Section 4.
Preferred Lot	The lot that an Applicant nominates as its preferred lot in a lot category.
Qualification Criteria	The criteria set out in Rule 8.2 that an Application shall satisfy in order for the Applicant to be considered to be a qualified Applicant.
Qualification Documentation	The information included in an Application required for establishing that the Application meets the Qualification Criteria.
Qualified Applicant	An Applicant whose Application has complied with the Qualification Criteria
Registration	The process by which a prospective Applicant registers <u>or re-registers</u> with the Commission <u>its</u> his interest in submitting a response to the <u>MITA in accordance with the requirements of Sections 5.3 to 5.6</u> upon payment of the Registration Fee <u>as required or waived in accordance with the Rules.</u>
Registration Fee	The non-refundable fee specified in Rule 4.1 that a person shall pay upon Registration.
RF	Radio frequency
Rules	The set of requirements for an Application to be considered valid as stipulated in this <u>MITA</u> .
Successful Applicant	An Applicant declared as such by the Commission after application of the Application evaluation criteria in Section 8.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Term	Meaning
Undertakings	Actions and commitments agreed <u>and signed</u> between a mobile operator and the Commission <u>at least two Working Days prior to Registration</u> , to be undertaken by a mobile operator in order to become materially compliant with the Act, their Licence, the Regulations, the Telecommunications Code and any instructions issued by the Commission as required in Rule 2.2.ii
Website	The Commission's website (www.trc.vg).
Working Day	A day (other than a Saturday or Sunday) on which the clearing banks in VI are open for general business.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Appendix A: Draft Frequency Authorisation

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



**TELECOMMUNICATIONS REGULATORY COMMISSION
RADIO FREQUENCY AUTHORISATION**

Authorisation Number: [to be added]

DATE OF ISSUE (dd/mm/yy): [to be added]
DATE OF EXPIRATION (dd/mm/yy): [to be added]

The Telecommunications Regulatory Commission (the “Commission”) **HEREBY ISSUES** this Frequency Authorisation to the Authorisation Holder for the use of the spectrum contained in the assigned frequency band in the Virgin Islands in accordance with the Telecommunications Act, 2006 (the “Act”) and subject to the terms and conditions herein.

Terms and Conditions

1. Interpretation

- 1.1.** In this Frequency Authorisation, unless indicated otherwise, the following words shall have the following meanings:
- a) “assigned frequency band” means the frequencies authorized by the Commission for use by the Authorisation Holder under this Frequency Authorisation as identified in Schedule A hereto.
 - b) “Date of Issue” means the date of issue hereinabove written.
 - c) “Date of Expiration” means the date of expiration hereinabove written.
 - d) “facilities” means particular poles, masts, towers, roof-tops and other similar apparatus, inclusive of buildings, which are used to host the equipment used by the Authorisation Holder to facilitate operations on the assigned frequency band.
 - e) “IMT telecommunications services” means subject to such definition that may be published from time to time by the International Telecommunications Union, such telecommunications services that may be provided utilising those systems, system components and related aspects of International Mobile Telecommunications as defined by the International Telecommunications Union.
- 1.2.** Except as specified in 1.1 above, the words and expressions used herein shall have the meanings given in the Act.
- 1.3.** References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. General Conditions

2.1. Regulatory Framework and Applicable Laws

- 2.1.1.** The Authorisation Holder shall comply with the provisions of the Act in the operation or use of the assigned frequency band. The terms and conditions of this Frequency Authorisation shall be subject to the provisions of the Act.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



2.1.2. The Authorisation Holder shall comply with all Regulations, with the Telecommunications Code, the terms and conditions of its licence, any lawful instructions from the Commission and all other instruments made under the Act and all relevant laws in force from time to time in the Virgin Islands.

2.1.3. The Authorisation Holder shall comply with any lawful directive issued by the Commission or any other person so duly authorised under the Act.

~~2.1.3:~~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.

~~2.1.4:~~2.1.5. The terms and conditions of this Frequency Authorisation shall be construed in accordance with the Laws of the Virgin Islands.

2.2. Term

2.2.1. This Frequency Authorisation shall take effect from the Date of Issue and shall expire on the Date of Expiration (the “Term”).~~”~~

2.2.2. The Commission alone shall determine whether, upon expiration of the Term, this Frequency Authorisation shall be renewed. In deciding whether to renew this Frequency Authorisation, the Commission shall take into account:

- a) the conduct of the Authorisation Holder during the Term or during the term of any licence granted by the Commission to the Authorisation Holder;
- b) whether the Authorisation Holder failed to comply materially with the Act, with the Telecommunications Code, with the terms of this Frequency Authorisation, its licence, any instructions from the Commission and with any lawful directive of the Commission;

2.2.3. This Frequency Authorisation shall terminate in the event the Authorisation Holder ceases to hold, for whatever reason, a licence for the operation of a telecommunications network providing services in the Virgin Islands.

2.3. Payment of Fees

2.3.1. The Authorisation Holder shall pay to the Commission annual fees of US\$1,400 per MHz of total frequency spectrum as defined in Schedule A. Annual fees will be payable in advance and the first payment of such fees shall be due upon grant of this Frequency Authorisation.

2.3.2. The Authorisation Holder shall pay to the Commission such fees applicable to the use of the assigned frequency band as the Commission may determine from time to time in accordance with section 5.3 of the Authorisation Holder’s Unitary Licence inclusive of application fees.

2.3.3. Subject to Regulations, fees payable by the Authorisation Holder under Article 2.3.1 above shall be payable from the Date of Issue.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



2.4. Requirement to Furnish Information to the Commission

2.4.1. Without prejudice to the obligation of the Authorisation Holder to provide specific information to the Commission under the terms of this Frequency Authorisation, the Authorisation holder shall provide the Commission with such information in such manner and at such times as the Commission may request in accordance with the Act.

2.5. Remedies for Non-Compliance

2.5.1. Without prejudice to any other right of action available to the Commission under the terms of this Frequency Authorisation or under any other law or regulation, the Commission may take such action as it considers appropriate under the Act for a breach of any condition of this Frequency Authorisation.

2.5.2. If in the opinion of the Commission, the Authorisation Holder has engaged in any conduct identified in section 75(1) of the Act, the Commission may exercise such enforcement powers against the Authorisation Holder under section 75(2) of the Act.

2.5.2-2.5.3. 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.

2.6. Force Majeure

2.6.1. The Authorisation Holder shall not be held liable for failure to comply with its obligations under this Frequency Authorisation to the extent that the Commission is satisfied that such failure was directly attributed to an act of force majeure provided that the Authorisation Holder shall use all reasonable endeavours to resume performance of its obligations as soon as the effect of the event of force majeure ceases or abates. For the avoidance of doubt, there are no circumstances in which failure to pay fees due hereunder will be attributed to an act of force majeure.

2.6.2. The Authorisation Holder may during a period of emergency in which public services are disrupted due to an act of force majeure, use the assigned frequency band for emergency communications and in a manner other than as specified in this Frequency Authorisation provided that such use only persists during the declared period of emergency and is discontinued when it is possible to resume normal telecommunications services or until such special use of the assigned frequency bands is terminated by the Governor.

2.7. National Security

2.7.1. The Authorisation Holder shall, upon request by the Governor or otherwise in accordance with any relevant law, co-operate with the Governor or other official

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



agency duly authorised by the Governor to the extent required in matters of law enforcement, public emergency or national security.

- 2.7.2. The Authorisation Holder shall make available to the Government, as authorised by the Governor, its facilities and or telecommunications equipment for such purposes as may be required under section 89 of the Act when a period of public emergency has been declared.

2.8. Amendment

- 2.8.1. This Frequency Authorisation may be amended by the written agreement of the Authorisation Holder or by the Commission and otherwise in accordance with section 23 of the Act:
- a) due to the effect of an act of force majeure, national security considerations, changes in national legislation or, subject to section 86 of the Act, the need to implement international obligations; or
 - b) if the Commission, taking into account the public interest, otherwise deems it necessary to achieve the purposes of the Act.

2.9. Assignment or Transfer

- 2.9.1. The Authorisation Holder shall not, without the prior written approval of the Commission, such approval not to be unreasonably withheld, transfer, assign or otherwise part with this Frequency Authorisation or any permission, right, obligation or benefit granted under this Frequency Authorisation
- 2.9.2. Subject to section 20 of the Act, the Authorisation Holder shall not, without the prior written approval of the Commission, such approval not to be unreasonably withheld, enter into any agreement or other arrangement the effect or the purported effect of which would be to permit a person to acquire a significant interest in the Authorisation Holder.

2.10. International Obligations

- 2.10.1. The Authorisation Holder shall comply with such Regulations of the International Telecommunications Union as the Commission may adopt from time to time and shall observe such international obligations that may be applicable to the Virgin Islands.

2.11. Termination and Suspension

- 2.11.1. This Frequency Authorisation may be terminated or suspended in accordance with the Act.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



2.12. Service of Notices

- 2.12.1. Any notice required to be given by the Commission to the Authorisation Holder under this Frequency Authorisation shall be in writing and shall be deemed to have been given if sent by hand or post or by facsimile (in the case of facsimile when proof of transmission is received) to the Authorisation Holder's address in the Territory, as indicated in the Authorisation Holder's application for a frequency authorisation or any other address of which the Authorisation Holder might have provided notice to the Commission from time to time.
- 2.12.2. Any notice required to be given by the Authorisation Holder to the Commission under this Frequency Authorisation shall be in writing and shall be deemed to have been given if sent by post or by facsimile (in the case of facsimile when proof of transmission is received) to the Commission's principal place of business in the Territory.

3. Conditions Specific to the Use of the Assigned Frequency Band

3.1. Use of Spectrum

- 3.1.1. The Authorisation Holder shall use the assigned frequency band for the delivery of IMT Telecommunications Services within the Territory of the Virgin Islands to the extent as may be technically possible without causing harmful interference to the telecommunications network of another operator. The Authorisation Holder shall not use the assigned frequency band for any other purpose without the prior written approval of the Commission and in any event shall not use the assigned frequency band for any purpose other than to operate a telecommunications network and or to provide a telecommunications service in the Territory of the Virgin Islands.
- 3.1.2. The Authorisation Holder shall comply with the terms and conditions of this Frequency Authorisation and the Schedules hereto which include Minimum Service Requirements, a Network Deployment Plan and agreed Additional Commitments.
- 3.1.3. The Authorisation Holder shall ensure that telecommunications services are provided within the Territory of the Virgin Islands to at least the minimum service requirements defined in Schedule B, the Network Deployment Plan in Schedule C and the Additional Commitments defined in Schedule D.
- 3.1.4. The Authorisation Holder shall ensure that its use of the assigned frequency band does not cause harmful interference to any other authorised user of the spectrum unless and to the extent provided for under the Act, in accordance with Regulations or with the Telecommunications Code and or in accordance with international recommendations and standards recognised by the International Telecommunications Union.
- 3.1.5. The Authorisation Holder shall ensure that its use of the assigned frequency band does not cause danger to the public.
- 3.1.6. The Authorisation Holder shall, when using the assigned frequency band, take proper and adequate measures to safeguard life, property and the environment, including

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



safeguarding against exposure to any electrical or radiation hazard emanating from any equipment used by the Authorisation Holder.

- 3.1.7. The Authorisation Holder shall ensure that any radio communications service or radio transmitting equipment operated on the assigned frequency band or otherwise with the use of the spectrum is in compliance with such emission standards and technical specifications that may be published by the Commission from time to time.
- 3.1.8. The Authorisation Holder shall, in accordance with instructions issued by the Commission from time to time, co-operate with the Commission in its co-ordination and management of the efficient use of the spectrum as a public resource and shall provide any assistance reasonably requested by the Commission for this purpose. Such assistance shall include realignment of authorised spectrum within a frequency band for the purpose of ensuring contiguous spectrum for all authorisation holders using that frequency band.
- 3.1.9. Subject to Article 3.2 below, the Authorisation Holder shall, in accordance with the Act and with any other applicable law, obtain all required approvals and rights of access for access to lands and or for the construction or erection of the facilities or of any equipment or other installation in relation to the use of the assigned frequency band.
- 3.1.10. The Authorisation Holder shall retain accurate and up-to-date detailed records of the operation of a telecommunications network or the provision of a telecommunications service on the assigned frequency band and shall make such information available to the Commission promptly upon request and without charge to the Commission in accordance with the Act.
- 3.1.11. Without prejudice to the provisions of the Act, the Authorisation Holder shall allow the Commission upon receiving reasonable prior notice to inspect the facilities, inclusive of the Authorisation Holder's equipment and shall provide any related assistance to satisfy the Commission that the Authorisation Holder is in compliance with the terms and conditions of this Frequency Authorisation.
- 3.1.12. The Authorisation Holder shall not significantly change the location or any technical parameter of any transmitter used on the assigned frequency band without the prior approval of the Commission.

3.2. Construction of Sites

- 3.2.1. The Authorisation Holder shall ensure that the facilities:
 - a) are used, to the maximum possible extent, on a shared basis with other users of the spectrum, licensees and public utilities. To the extent that it is not considered feasible to use the existing facilities and utility installations, the Authorisation Holder shall submit such proof to the Commission as the Commission considers appropriate;

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- b) are designed and constructed in such a way that they blend in with the surrounding physical environment to the maximum possible extent and to the satisfaction of the Commission.
- 3.2.2. Except where the Commission exempts a specific type of facility from the requirements of Article 3.2.1 above, the Authorisation Holder, shall satisfy the Commission that the facilities, inclusive of the equipment hosted therein will comply such requirements.
- 3.2.3. The Commission may recommend changes to the design, structure or any other aspect of the facilities to ensure that the Authorisation Holder complies with the requirements of Article 3.2.1(a) and (b).

3.3. Maintenance of Technical Records

- 3.3.1. The Authorisation Holder shall maintain accurate, up to date and detailed technical data in relation to the use of the assigned frequency band authorised by this Frequency Authorisation as follows:
 - a) A plan for the use of the assigned frequency band identifying:
 - i. The name of each cell site used in relation to the assigned frequency band;
 - ii. Information in relation to the size of the guard bands;
 - iii. A channelization plan identifying the channels used on the assigned frequency band.
 - b) Specifications of the telecommunications equipment, including each antenna, used in the operation of any network or in the provision of any services on the assigned frequency band;
 - c) The coverage area;
 - d) The effective radiated power (ERP) and the radiated pattern of each antenna;
 - e) A Site map of the Station including geographical location coordinates in latitude and longitude to at least one metre resolution;
 - f) The height of each antenna above ground level, and boresight bearing east of true north (if applicable); and
 - g) The International Telecommunications Union emission designation.
- 3.3.2. The Authorisation Holder shall, subject to section 70 of the Act, provide the Commission with the records referred to in 3.3.1 above on a quarterly basis and in such form as might be specified by the Commission from time to time.
- 3.3.3. The Authorisation Holder shall notify the Commission of any proposed material changes to its radio communication service or radio transmitting equipment, and shall provide the Commission with such information as the Commission shall reasonably require for the purpose of assessing the effect of such changes.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



3.4. Enforcement

- 3.4.1. The Commission may take such enforcement action against the Authorisation Holder as it considers appropriate and or suspend or terminate this Frequency Authorisation in accordance with the Act.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



By:)
GUY LESTER MALONE)
Chief Executive Officer)
For and on behalf of:)
THE TELECOMMUNICATIONS)
REGULATORY COMMISSION)

By:)
[REPRESENTATIVE])
[position])
For and on behalf of:)
[Name of Authorisation Holder])

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



SCHEDULE A
The Frequency Band

The Commission hereby assigns to the Authorization Holder the following frequency band for the operation of a telecommunications network and the provision of telecommunications services subject to the terms and conditions of this Frequency Authorisation:

Uplink frequency range		Downlink frequency range	
Lower bound	Upper bound	Lower bound	Upper bound
[xxx] MHz	[xxx] MHz	[xxx] MHz	[xxx] MHz

The total frequency spectrum assigned under this authorisation is [sum of uplink and downlink frequency ranges] MHz.

SCHEDULE B
Minimum Service Requirements

The Authorisation Holder shall provide services in the Virgin Islands using the frequency bands defined in Schedule A and shall ensure that the following minimum service requirements are attained:

1. The minimum service requirements defined in this Schedule shall be met using the frequency bands specified in Schedule A.
2. The Authorisation Holder shall provide, and thereafter maintain, a telecommunications network that is capable of providing at 90% of locations within any area of 100m by 100m a mobile telecommunications service with a sustained downlink speed of not less than 2 megabits per second when that network is lightly loaded, to users:
 - a) within 12 months of the Date of Issue;
 - b) to at least 90% [95% where the frequency band specified in Schedule A includes spectrum from the 700 MHz band] of the population of each of the islands of Tortola, Anegada, Jost Van Dyke and Virgin Gorda.
3. For the purpose of the Minimum Service Requirements, a network is considered 'lightly loaded' if it has a single user demanding service within the serving cell, and the surrounding cells of the network are loaded to a light level (by which is meant the common channels only are transmitting at 22% of the maximum cell power).
4. The Commission may assess the Authorisation Holder's compliance with this Schedule by assessment of the Network Deployment Plan submitted by the Authorisation Holder with its application for a Frequency Authorisation. Where applicable, the Network Deployment Plan is attached to this Frequency Authorisation as Schedule C.
5. Where a Network Deployment Plan is attached to this Frequency Authorisation as Schedule C, the Authorisation Holder shall deploy, and thereafter, maintain its network, incorporating at a minimum, the cell sites with the configuration defined in the Network Deployment Plan.
6. The Network Deployment Plan may only be varied with the written approval of the Commission, such approval not to be unreasonably withheld. Such approval will only

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



be granted where the proposed changes are capable of meeting the minimum service requirements defined in this Schedule.

7. In this Schedule:

- a) “population” means persons resident in the British Virgin Islands, including its territorial waters, who have access to a mobile telecommunications network.
- b) “Network Deployment Plan” means a document which defines urban and rural link budgets based on the IMT technology to be deployed, coverage maps produced using industry recognised propagation analysis software and a list of cell sites including the information defined in paragraph [3.3.13.3.13.3.1](#) of this Frequency Authorisation.

SCHEDULE C

Network Deployment Plan

The Authorisation Holder shall deploy, and thereafter maintain, its network incorporating as a minimum the cell sites with the configuration defined in the Network Deployment Plan of this Schedule. The Network Deployment Plan may only be varied with the written approval of the Commission, and such approval is not to be unreasonably withheld. Such approval will only be granted where the proposed changes are capable of meeting the minimum service requirements.

[to be appended upon grant of the Frequency Authorisation]

SCHEDULE D

Additional Commitments

The Authorisation Holder shall provide services in the Virgin Islands as defined below using any public mobile spectrum for which it has Frequency Authorisations.

[to be appended upon grant of the Frequency Authorisation]

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Appendix B: Forms

- B.1 This Appendix includes all the Forms that interested persons shall be required to complete and submit to the Commission in accordance with the Award Rules.
- B.2 It contains the following forms:
- i. FORM A: Registration Form
 - ii. FORM B: Applicant's Information Form
 - iii. FORM C: Proof of Authority for Authorised Persons
 - iv. FORM D: The Applicant's Declarations Form
 - v. FORM E: Spectrum of Interest Form
 - vi. FORM F: Compliance Certificate
 - vii. FORM G: Reaffirmation Certificate

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form A – Registration Form

Section 1: Details of the Registering Party

Please provide the following details for the Registering Party:

Full Company Name	
Registered Company Number	

Section 2: Contact Details

Please provide the following contact details for at least one (and an alternative) contact.

Full Name	
Job title	
Email Address	
Postal Address	
Direct Dial Telephone Number	
Fax Number	

Full Name	
Job title	
Email Address	
Postal Address	
Direct Dial Telephone Number	
Fax Number	

Instructions for the Completion of the Registration Form

This Registration Form should be completed in accordance with the following instructions. The Commission may reject a Registration Form which has not been completed in accordance with these instructions.

- i. The Form may be completed either electronically or in handwriting using blue ink.
- ii. If the Form is completed in handwriting, block capitals should be used.
- iii. If additional space is required for the provision of responses in any Section completed in hard copy, please attach clearly marked additional pages to the Form and state the number of attached pages on the front page of the Form. All additional pages should be signed by the person whose contact details are provided in Section 2 of the Form.
- iv. The contact information should be provided for at least one and an alternative contact.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- v. The contact details shall be for the specific named contact person (i.e. not a general clearing or switchboard address/telephone number).

Instructions for the payment of the registration fee

Upon submission of this Registration Form, a Registration Fee of US\$ 500 shall be paid to the Commission unless the Registration Fee has been waived in accordance with Section 4.1. The Registration Fee is non-refundable.

A person will be deemed to have successfully registered only upon submission of this Registration Form pursuant to Rule 5.3 of the ITA and payment or waiver of the Registration Fee in accordance with the Payment Instructions outlined in Section 4 of the ITA.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form B – Applicant’s Information Form

Section 1: Details of the Applicant:

a) Please provide the following details for the Applicant:

Full Company Name	
Company Registration Number	
Address of Registered Office	
Date of Incorporation (MM/DD/YYYY)	
Place of Incorporation	
Applicant Registration Password	

b) Please attach to this Form a current excerpt from the Companies Register or Certificate of Incorporation.

Attached	
----------	--

Section 2: Contact Details

Please provide the following contact details for at least one Person authorised to act on behalf of the Applicant in relation to the Award and who shall be the nominated contact person for related communications with the Commission.

Principal Authorised Person	
Nationality	
National Identification Card or Passport Number (please indicate which)	
Position	
Email Address	
Postal Address	
Direct Dial Telephone Number	
Fax Number	

Please provide the names and equivalent contact details for an alternative individual authorised to act on behalf of the Applicant in matters pertaining to the Award.

Second Authorised Person	
Nationality	
National Identification Card or Passport Number (please indicate which)	
Position	
Email Address	

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Postal Address	
Direct Dial Telephone Number	
Fax Number	

Section 4: Signature of Authorised Person

The undersigned, being a person authorised to act on behalf of [*Name of Applicant*] in all matters related to this Award, confirms that the information provided in Applicant's Information Form B is, to the best of his/her knowledge, true, accurate and complete at the date of Signature.

Printed Name of Authorised Person:

Signature

Date of signature (MM/DD/YYYY)

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form C – Proof of Authority

Applicant Address Line 1
Applicant Address Line 2
Applicant Address Line 3
Applicant Address Line 4

The CEO
Telecommunications Regulatory Commission ,
P.O. Box 4401
Road Town, Tortola VG1110
British Virgin Islands

Date:

Dear Sir,

Authority to Act on Behalf of the Applicant– FORM C

By Resolution of the Board of Directors of **[Insert name of Applicant]** on **[Insert date of Resolution]** to grant the Power of Attorney, a notarised copy of which I attach to this letter, I hereby confirm that **[insert names of all Authorised Persons listed in Form B]** are authorised to act on behalf of **[insert name of Applicant]** in all matters related to the award of spectrum in accordance with the Invitation to Application published by the Commission on **[insert date of ITA]**, including the acceptance of the terms and conditions of any Frequency Authorisation that may be offered to **[Insert name of Applicant]** and the execution of such Frequency Authorisation for that purpose.

Yours sincerely,

Company Secretary

[Name of Applicant]

INSTRUCTIONS FOR THE ATTACHMENTS TO FORM C

Form C shall be accompanied by a notarised copy of the Power of Attorney authorising specific named persons to act on behalf of the Applicant. It shall also contain a notarised copy of the signatures of all the Authorised Persons. The signatures on all Forms will be compared to the notarised copies in order that their authenticity can be positively determined.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form D – Applicant’s Declarations Form

Section 1

Name of Applicant	
Registration reference	

Section 2: Ownership structure

For each person with a shareholding in the Applicant equal to or in excess of 10%, please provide the information in the table below and, where applicable, provide a current excerpt from the Commercial Register or Certificate of Incorporation for that party.

Full Name of Shareholder	
Registered Office (if applicable)	
Date of Incorporation (MM/DD/YYYY) (if applicable)	
Place of Incorporation (if applicable)	
Commercial Register Number (if applicable, or local equivalent)	
Principal place of business	
Summary of principal business activity	

Applicants shall also provide a structure chart(s) showing the relationship between/among the Applicant and its Affiliates.

Section 3: Acceptance and declaration

[Name of Applicant] hereby declares that the Applicant is legally capable of holding a Frequency Authorisation and or a Licence for the provision of mobile telecommunications services to the public in the Virgin Islands in accordance with the Telecommunications Act, 2006.

[Name of Applicant] hereby undertakes that if it is a Successful Applicant to which the Commission offers an award of spectrum, it will unconditionally accept all the terms and conditions of the Frequency Authorisation as set out in the Appendices of the ITA.

[Name of Applicant] hereby represent and warrant that:

- **[Name of Applicant]** is legally capable of submitting an Application in response to the ITA and otherwise participating in the Award;
- Neither **[Name of Applicant]** nor any of its Affiliates nor any of their directors or employees has reached any agreement with or colluded with any other person in such manner as might reasonably be expected to distort the competitive outcome of the Award;
- **[Name of Applicant]** has complied at all times with and undertakes to continue to comply with the Award Rules;

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



- All representations made in the Application and that may subsequently be made by [Name of Applicant] in connection with the Award are, to the best of [Name of Applicant]'s knowledge, having made all reasonable enquiries, correct;
- [Name of Applicant] understands that if it makes a materially incorrect representation it may be liable to disqualification from the Award;
- To the best of [Name of Applicant]'s knowledge, [Name of Applicant] is not currently and is not expected to have any Material Interest in any other Applicant.

The undersigned, being a Person authorised to act on behalf of [Name of Applicant] in all matters related to this Award, confirms that the information provided in this Form D is, to the best of his/her knowledge, true, accurate and complete at the date of Signature.

The undersigned accepts and understands the declarations made at Section 3 of this Form D.

Printed Name of Authorised Person

Signature

Date of signature (MM/DD/YYYY)

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form E – Lot Preference Form

Section 1: Applicant Information

Applicant's full name	
Registration reference	

Section 2: Spectrum lots of interest

Applicants should indicate their order of preference for lots in the 700 MHz band in the table below.

Lot category	Preference	Lot reference
P	1 st Preferred Lot	None / P1 / P2 / P3*
	2 nd Preferred Lot	None / P1 / P2 / P3*
	3 rd Preferred Lot	None / P1 / P2 / P3*

* Delete as applicable

Applicants should indicate their order of preference for lots in the 1900 MHz and AWS-1 bands in the table below for each potential 700 MHz lot they may obtain in the award.

Lot category	Lot obtained in 700 MHz band	Preference	Lot reference
Q	P1	1 st Preferred Lot	None / Q1 / Q2 / Q3*
		2 nd Preferred Lot	None / Q1 / Q2 / Q3*
		3 rd Preferred Lot	None / Q1 / Q2 / Q3*
	P2	1 st Preferred Lot	None / Q1 / Q2 / Q3*
		2 nd Preferred Lot	None / Q1 / Q2 / Q3*
		3 rd Preferred Lot	None / Q1 / Q2 / Q3*
	P3	1 st Preferred Lot	None / Q1 / Q2 / Q3*
		2 nd Preferred Lot	None / Q1 / Q2 / Q3*
		3 rd Preferred Lot	None / Q1 / Q2 / Q3*
	No Category P lot	1 st Preferred Lot	None / Q1 / Q2 / Q3*
		2 nd Preferred Lot	None / Q1 / Q2 / Q3*
		3 rd Preferred Lot	None / Q1 / Q2 / Q3*

* Delete as applicable

Where no single lot reference is clearly indicated in the above tables, the Commission will assume that no lot reference has been selected.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Section 3: Declaration and signature

The undersigned, being a Person authorised to act on behalf of [Applicant's name] in all matters related to this Award, confirms that in the event that [Applicant's name] is a Successful Applicant in the Award, [name of Applicant] hereby undertakes to:

- pay all fees associated with the grant of any Frequency Authorisation that might be offered to the Applicant; and
- release spectrum from existing frequency assignments as necessary to comply with spectrum caps prior to the grant of Frequency Authorisations in this award; and
- agree to the inclusion of the Network Deployment Plan and Additional Commitments submitted with this Application to become obligations of the Frequency Authorisations in accordance with the Rules of the Award.

Printed Name of Authorised Person

Signature

Date of signature (MM/DD/YYYY)

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form F – Compliance Certificate

Section 1: Applicant Information

Applicant's full name	
Registration reference	

Section 2: Statement of Compliance

The Applicant is operating within the terms of its current Licence and frequency authorisations, is compliant in all material respects with the Act, the Regulations, the Telecommunications Code and any instructions of the Commission OR the Applicant has delivered legally binding Undertakings to the Commission at least two (2) Working Days prior to Registration, which have been (a) agreed by the Commission at least two (2) Working Days prior to Registration, (b) identify all areas of material non-compliance and provide a clear plan to address each area with deadlines which are consistent with the timetable for this award process, and (c) include acceptable guarantees of performance of their Undertakings, which have been (a) agreed by the Commission, (b) provide a clear plan to address all areas of non-compliance which include appropriate deadlines consistent with the timetable of the Award, and (c) include acceptable guarantees of performance of the agreed Undertakings. The agreed Undertakings are attached to this Form F.

Section 3: Certification and signature

The undersigned, being a Person authorised to act on behalf of [Applicant's name] in all matters related to this Award, confirms that in the event that [Applicant's name] is a Successful Tenderer in the Award, [Applicant's name] hereby certifies that the Statement set out in Section 2 is true and correct.

Printed Name of Authorised Person

Signature

Date of signature (MM/DD/YYYY)

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Form G – Application Content Certificate

Name of Applicant:

Formatted: Font: 12 pt, Font color: Purple

Formatted: No bullets or numbering

Status

Formatted: Font: 12 pt, Font color: Purple

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

Formatted: Font: 12 pt, Font color: Purple

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)

| Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and
AWS-1 Frequency Bands



Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Appendix E: Appendix C: Guidelines for submission

The following guidelines for submission are provided to assist Applicants submit information relevant to each of the Evaluation Criteria.

Rollout and coverage

Rollout commitments should be made for specific dates at 6 months, 12 months and 24 months after the date of Frequency Authorisation. The score will be attributed based on the coverage promised for those specific dates and maintained thereafter, and no additional score will be attributed for achieving the coverage earlier than that date (i.e. earlier than the first date or between the dates specified).

- 30% of the score will be attributed to commitments at 6 months
- 40% of the score will be attributed to commitments at 12 months
- 30% of the score will be attributed to commitments at 24 months

At each rollout date, Scoring will be based on coverage of following areas using the weightings given.

Area covered	Measure			Weighting
	6 months	12 months	24 months	
Tortola	Outdoor coverage*	Indoor coverage**	Indoor coverage**	50%
Virgin Gorda	Outdoor coverage*	Indoor coverage**	Indoor coverage**	10%
Anegada	Outdoor coverage*	Indoor coverage**	Indoor coverage**	6%
Jost Van Dyke	Outdoor coverage*	Indoor coverage**	Indoor coverage**	6%
Guana	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	5%
Great Camanoe	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	5%
Scrub	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	4%
Beef	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	3%
Peter	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	3%
Norman	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	3%
Cooper	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	3%
Ginger	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	1%
Salt	Deployed at least 1 base station	Deployed at least 1 base station	Deployed at least 1 base station	1%
Total				100%

* For assessment of outdoor coverage at 6 months the Additional Commitments will be compared with the Minimum Service Requirements defined in the Frequency Authorisation.

** For the purposes of defining Additional Commitments, indoor coverage is defined as the areas within buildings having in-building propagation losses ≤12dB. To obtain the score associated with indoor coverage the Applicant shall specify how its Network Deployment Plan will vary to accommodate the additional in-building propagation loss.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Services offered and quality of service

Quality of Service will be assessed using a mix of quantitative and qualitative measures. The quantitative measures focus directly on the provision of data services and are intended to ensure that a high quality platform of delivery is maintained. For the Qualitative measures the Applicant is invited to describe the breadth and quality of services offered including product packaging, specific applications and interaction with particular end user devices. The Applicant should describe the introduction of these within a 12 month timeframe. *The Commission considers it is in the public interest that services offered and quality of service (including download data rates) remains in line with technology developments and international best practice.*

Formatted: Font: Italic

Type of measure	Timeframe	Metric	Weighting
Quantitative	6 months	Average user data rate that can be expected across the network within the defined coverage area under loaded network conditions	14.7%
		Peak user data rate that will be offered based on the technology to be deployed	6.3%
	12 months	Average user data rate that can be expected across the network within the defined coverage area under loaded network conditions	19.6%
		Peak user data rate that will be offered based on the technology to be deployed	8.4%
	24 months	Average user data rate that can be expected across the network within the defined coverage area under loaded network conditions	14.7%
		Peak user data rate that will be offered based on the technology to be deployed	6.3%
Qualitative	12 months	Description of innovative data services and applications	30%
Totals			100%

Performance guarantees

The purpose of performance guarantees is to give Applicants the opportunity to reinforce their Additional Commitments by providing the Commission with the means to assess and enforce compliance. Applicants will score highest in this regard where they:

- Offer verification methods that are simple and unambiguous to implement; and
- Include performance bonds or other forms of financial guarantees that can be drawn upon in the event of non-compliance.

The scoring associated with performance guarantees will be split between those associated with rollout and coverage, and the services offered and quality of service. The score will be attributed to the methods of verification and performance bonds or other forms of financial guarantee as shown in the following table.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



Criteria	Aspect	Weighting
Rollout and coverage	Methods of verification	15%
	Performance bond or other financial guarantee up to \$500,000	35%
Services offered and quality of service	Methods of verification	15%
	Performance bond or other financial guarantee up to \$500,000	35%
Total		100%

Performance bonds or other financial guarantees at levels higher than the upper bound indicated in the above table will not be attributed any additional score. The performance bond or other financial guarantee may take the form of a money payment or other irrevocable financial guarantee to the Commission prior to the grant of the Frequency Authorisation.

Quality of the business plan

A credible business plan is important to demonstrate that the operator has thought through the provision of advanced data services and understands the financial implications submitting the Additional Commitments. Assessment of the business plan will look for a professional approach to business planning and consistency across all assumptions made.

It is for the Applicants to decide whether they submit a business plan for services using the newly awarded spectrum alone or the entire mobile business. Applicants may prefer to present a plan covering the entire mobile business where revenues are difficult to attribute by technology. However, Applicants should separate revenues and costs associated with the spectrum to be awarded where possible.

The business plan should include discounted cash flow analysis showing the impact of introducing advanced high speed data services using the spectrum that is the subject of this award and for which the applicant is applying. The analysis should be for a 10 year period from the grant of the licence and should include as a minimum:

- Projected market size in VI in terms of revenues and subscribers
- Projected market share of revenues and subscribers
- Capital expenditure
- Operational expenditure
- Financial strength of applicant, covering the timing of fund raising, sources of funds and nature of commitment by providers of capital.

The assumed cost of capital should also be stated with justification.

Modified Invitation to Apply for Spectrum in 700 MHz, 1900 MHz and AWS-1 Frequency Bands



A business plan which that does not cover its cost of capital or relies on overly optimistic or invalid assumptions will be awarded a low score. Applicants that include valid supporting evidence for their assumptions such as benchmarks from Caribbean and other international markets will be awarded a higher score.

Competitiveness and consumer benefit

Applicants should describe the range of services and the user devices they would offer using the spectrum to be awarded. The score attributed using this criterion would have the following weighting:

- *25% based on the flexibility of the product offerings (ability to cater for a range of low and high usage segments)*
- *25% based on a wide variety of user terminals including both budget and advanced devices*
- *20% based on the Applicant's proposals for consumer education and information initiatives regarding the use of advanced mobile devices and services*
- *30% based on innovative service offerings.*

It is important that Applicants are able to describe their service plans and the types of terminal they would offer to the market and show relevant linkages to their business plans and any service or other agreements they have with third party suppliers.