



BOTSWANA COMMUNICATIONS REGULATORY AUTHORITY

CONSULTATION PAPER ON THE UNIFIED LICENSING FRAMEWORK (ULF) FOR BOTSWANA

JUNE 2014

I. INTRODUCTION:

This consultation paper provides the first initial background on the intended option to move to a Unified Licensing Framework (ULF) in Botswana. It draws on the report done for BOCRA by the World Bank under the World Bank-Botswana, Reimbursable Advisory Services Project on Economic Diversification and Competitiveness with specific reference to reviewing the ICT regulatory framework in the sector (Component 3 of Box 1). The overall framework recommended factors in the wider ambition of Botswana to become an ICT hub in the region and move towards a knowledge economy. Box 1 below, briefly outlines the overall project.

The consultation serves as the first of two that the regulator will be undertaking in ensuring that we receive adequate input from all stakeholders. In deciding the framework for the ULF, the following aspects will need to be considered:

- The mapping of existing service specific licenses into ULF
- The scope and limits of the ULF
- The desired level of regulation
- The requisite license fees
- Implementation strategy for the ULF

The process described above begins with this consultation paper in eliciting your views on the proposed new ULF for the communications sector in Botswana. Following on from this initial stage, BOCRA intends to lay out proposals for a new market structure and licensing regime covering proposed fees and issues of spectrum and quality of services. It is envisaged that a second round of consultations will take place thereafter. It is envisaged that the entire process should take between 6 to 9 months from this initial consultation.

II. DISCUSSION QUESTIONS

This section uses the format where a Consultation Question is posed followed by BOCRA's preliminary position. Stakeholders are invited to react to BOCRA's preliminary position and/or provide your views.

In proposing a framework for Unified Licensing in Botswana, the following aspects will need to be considered:



- . The mapping of existing service specific licenses into Unified Licensing model
- . The scope of Unified License
- . The limits of Unified licensing
- . The desired level of regulation
- . License fees
- . Implementation strategy for Unified Licensing Regime: Phased or one-step implementation.

The proposed Unified Licensing Framework would categorise licenses as follows:

- Network Facilities License – the provisioning of any element or combination of **physical infrastructure** used principally for carrying Network Services, Content services and other Application services. Customer Premise Equipment are not included in the description of network facilities. The infrastructure may include fixed links, radio communications transmitters, satellite station, submarine cable, fibre/copper cable, towers, switches, base stations. The facilities are for own use or for availing to other licensed operators on commercial basis.
- Network Services License - a service for carrying electronic information in the form of speech, sound, data, text or images, not for broadcasting purposes. The services are carried over Network Facilities and are delivered to end users.
- Application Services License – provisioning to end users, services which deliver particular functions based on voice, data, content, cloud computing and electronic commerce. Applications provide certain functions and capabilities. Resellers of Network Services to end users as well as Mobile Virtual Network Operators fall under this category. The reseller services may include voice services, data services, Internet services, IP telephony and other services to end users. Application services are delivered over Network Facilities.
- Content Services License – provisioning of content material solely for broadcast (TV and radio) and other information services. The content is carried over Network Facilities. Subscription TV falls under this category.



1. What is the definition or understanding of the term unified licensing framework (ULF)?

ULF is a regulatory framework which embraces technological convergence and encourages innovativeness. Under the framework there is no distinction between, say, mobile or fixed services, satellite or terrestrial, data or voice services, etc. It is also a framework where the differences among licenses is dependent on which layers of the model one operates in.

2. What should be the simplified procedure for granting the licenses based upon the recommended licensing model?

BOCRA should award licenses in a time-bound manner. For new players, this will be based on the application and business plan put forward by the prospective licensee. For existing licensees, this will be a simple migration from the existing license.

3. Should we consider implementation of ULF through a multi stage process or a single stage process? What are the pros and cons of each approach? If the process were envisaged to be completed in phases, what should be the milestones and time frames for each step?

Single stage process should be followed. A multi-stage process may introduce undue delays and consequently disadvantage licensees and stifle market growth. Once the ULF is finalized, switchover has to be done after a gap of reasonable time-period by giving a clear notice of the date of switchover.

4. Should migration to ULF be optional or compulsory?

Unified licensing should be compulsory so that all licensees are afforded the opportunity to operate in a technology-neutral environment. Further, regulatory management becomes efficient and even-handed where all operate on the same environment. BOCRA will provide timelines by which all licensees shall have migrated to unified licences.

5. How should Internet telephony (Voice over Internet Protocol) be treated in Unified Licensing Regime? Should Internet telephony without any restriction, be permitted under the ULF? If yes, how should it be permitted?

Internet telephony should be permitted under the unified licence regime. There should be no restriction on the use of technology. It should be treated as an application equivalent to normal voice telephony, albeit noting that there may be restrictions on service quality and functionality (eg use of emergency calls).

6. How will the migration from service specific license to ULF including surrender of any dormant or non-performing license, if any, should be handled?



It is encouraged that the move to the unified licensing be done within the timeframes agreed with the regulator. Holders of dormant or non-performing license should provide a justification for why they should be renewed.

7. What should be the structure of license fee payments to be paid under the ULF?

The basic structure should be a one off charge for registration and a recurring, annual charge. The regulator's intent is to harmonize fees among existing and new licensees.

8. How many players will be licensed, and how will viability to comply with the licenses be determined?

With the exception of areas where there exists natural limitations, say in spectrum availability or numbering, the number of licensee in all other areas will be determined by the market.

9. What should be the basis of deciding the one-time Application Charge?

Normally, the application charge, or costs of registration, should be based on recovery of administrative expenses. However, in the case of scarce or finite resources, such as spectrum or telephone numbers, the regulator reserves the right to introduce market mechanisms for allocation, such as auctions, to reflect the market value of these resources.

10. Should license fees be dependent on the extent of geographical coverage?

At the present time, this is not the case. All existing licenses are valid for the full territory of Botswana. The regulator reserves the right to issue community or regional licenses in the future, in the context of universal service. This would be equivalent to creating tiers within each license category.

11. Should license fees be dependent on the number and type of services to be provided by the service provider?

Within a particular license category, fees should be independent of the number and type of services being proposed. Where applications cover multiple license categories, this would be reflected in the application charged levied.

12. What should be the basis for setting recurring (ie annual) fees for different license categories?

As a general principle, license fees should not act as an entry barrier. However, they should reflect the economic value of the opportunity being offered to prospective service providers. In the second round of consultations, a schedule of license fees will be proposed for comment, including benchmarking with comparator countries.



13. Should the minimum amount of the license fee be specified irrespective of the Annual Net Operating Revenue of the licensee?

Section 24 of the Communications Regulatory Act (CRA) provides for annual fees based on a percentage of Annual Net Operating Revenue and any other such fees as the Authority may lawfully impose. In the future schedule of license fees, a minimum fee may be applied, even for dormant or non-performing licenses, to avoid hoarding of licenses.

14. Should the proposed levy for the universal service obligation be uniform among all service providers within a particular license category?

Yes, in principle the universal service levy should be uniform among all service providers within a particular license category, but it would not be cumulative among license categories. Proposed levies for universal service obligation will be included in the new schedule of proposed fees, in the second round of consultation.

15. BOCRA currently requires a Bank Guarantee as a condition in the current licenses. What should be the level of Bank Guarantees fee for different services in the unified licensing framework?

Bank guarantees should be in proportion to the expected size of peak investment.

16. What should be the roll-out obligations for different services in ULF? Should BOCRA continue with service-specific roll-out conditions?

Based on the licensing category, roll-out obligations and performance bonds should be continued. In future, BOCRA may require repayment of a percentage of performance bonds for non-performing licensees.

17. What should be the interconnection regime in the ULF?

Interconnection is provided for under the CRA Act (2012), and operators should not abuse significant market power when setting termination offers. Interconnection fees are subject to commercial negotiation amongst operators but BOCRA reserves the right to intervene in the event of sub-optimal market outcomes.

18. Is there going to be a direct linkage between revision of the Numbering Plan and the implementation of the ULF?

Currently BOCRA does not levy fees for numbers under the numbering plan, but it reserves the right to review this situation in future.

19. Should Infrastructure sharing amongst different service providers be permitted?



Interconnection sharing is encouraged through the Infrastructure Sharing Guidelines. A new set of Regulations are awaiting consideration by Parliament. This will be incorporated into the ULF.

20. Should resale of capacity be permitted?

Resale of licenses is not allowed. However, an operator should be allowed to resell, or lease out, excess capacity for which a license is required (Section 39, 1 of the CRA) to other licensed operators. For services for which no license is required (Section 39, 2d of the CRA), resale is permitted without restriction.

21. What are the implications of having additional players for various telecom services?

BOCRA encourages new market entry through the unified licensing regime, including, for instance, mobile virtual network operators (MVNOs) and local representatives of Global Mobile Personal Communications by Satellite (GMPCS) operators. But they will need to apply for licenses in the appropriate service category.

22. Does BOCRA intend to consult on future frequency spectrum allocation?

This consultation forms the first round of consultations on the proposed new unified licensing framework (ULF). Consultations on spectrum are an ongoing process, carried out separately, with a consultation on LTE spectrum currently underway. The implications of spectrum allocations for unified licensing will be factored into the second round of the ULF consultations.

23. How should quality of service be maintained and improved?

As regards Quality of Services (QoS) requirements, the regulator is reviewing these parameters and will present proposals during the second consultation process. In particular, geographically disaggregated QoS indicators may be required under the new licensing regime.

24. When will BOCRA provide templates for the ULF for comments?

Templates for Unified Licenses will be provided in the second round consultation, based on comments received during this first round.

25. What is the timeframe for migration to ULF?

We expect to conclude migration to the new licenses within 12 months from the date of implementation, which will begin after the second round of consultation.

26. Existing mobile service providers have invested a lot of money in acquiring their current licences. How will the regulator ensure fairness under the ULF?



The existing mobile service providers were licensed based on an assurance of a countrywide frequency assignment and the cost of their licence was also determined by the then prevailing market forces. A similar process would be applied for any new entrants under the ULF (eg MVNOs).

27. Should the regulator restart the licence period so that the 15 years begin again from the date when a ULF licence is issued?

In principle, the new ULF licenses should take into account the expired duration of the existing licenses.

28. Why does the regulator include content providers in the licensing framework?

The production of content, through broadcasting and telecommunication networks, is part of BOCRA's mandate under the CRA, and therefore is included under the ULF.

29. Has the regulator benchmarked with other countries on the best practices for implementing ULF?

The Authority has benchmarked with several countries including the European Union, Tanzania, Singapore, Malaysia and South Africa amongst others. BOCRA would welcome proposals on additional comparator countries.

30. Does the proposed ULF support GMPCS and MVNOs?

The new unified licensing framework is intended to introduce competition at all levels, including in the establishment of virtual network operations, which should maintain a healthy competitive environment.

31. Under the ULF what changes, if any, are required to be made in other existing policies in Botswana

The proposed ULF is aligned with the new Communications Regulatory Act (2013). However, BOCRA intends to review all current policy documents to ensure that they comply with the new framework and to make appropriate recommendations to the Ministry of Transport and Communications. To this end, BOCRA welcomes any suggestions you may offer of issues requiring review.

In addition to the issues mentioned above, comments of stakeholders are invited on any other related matter that should be considered while finalizing the Unified Licensing Framework/Regime.