



## Telecommunications Regulatory Authority of Bahrain

### PUBLIC CONSULTATION

A public consultation document issued by the Telecommunications Regulatory Authority of the Kingdom of Bahrain (the “**Authority**”) in relation to a proposed Position Paper on the Licensing Approach to Internet Protocol (“**IP**”) Based Voice and Messaging Services in the Kingdom of Bahrain (“**Position Paper**”).

**16 July 2020**

**LAD/0720/159**

The address for responses to this document is:

The Acting General Director  
Telecommunications Regulatory Authority  
PO Box 10353  
Manama  
Kingdom of Bahrain

Alternatively, e-mail responses may be sent to [LAD@tra.org.bh](mailto:LAD@tra.org.bh).

The deadline for responses is 16.00 on 20 August 2020.

Purpose: To seek stakeholders’ views on a proposed Position Paper on the Licensing Approach to IP-Based Voice and Messaging Services in the Kingdom of Bahrain.

## 1 INSTRUCTIONS FOR SUBMITTING A RESPONSE

1.1 The Authority invites comments on this consultation document from all interested parties. Comments should be submitted no later than 16.00 on 20 August 2020

1.2 Responses should be sent to the Authority preferably by email (either Word or PDF format) or by fax or post to the attention of:

The Acting General Director

LAD@tra.org.bh

Telecommunications Regulatory Authority

PO Box 10353

Manama

Kingdom of Bahrain

Fax number: 17532125

1.3 Responses should include:

- (a) the name of the responding entity;
- (b) the name of the principal contact person;
- (c) full contact details (physical address, telephone number, fax number and email address);
- (d) in the case of responses from individual consumers, name and contact details; and
- (e) a brief statement explaining the interest of the responding entity.

1.4 The Authority seeks comments from stakeholders in the telecommunications industry, the business community and the general public on the Position Paper attached at **Annex 1** of this consultation document.

1.5 All comments should be supported as much as possible by detailed explanation, including, where relevant, references to the specific provisions of the Telecommunications Law (the "**Law**"),<sup>1</sup> Licences or any other regulatory instruments that the respondent is relying upon.

1.6 Further, the Authority invites respondents to provide comments in response to each of the questions listed for reference at **Annex 2**.

1.7 In the interests of transparency, the Authority intends to make all submissions received available to the public, subject to the confidentiality of the information received. Respondents are required to mark clearly any information included in their submission that is considered confidential. The Authority will evaluate a request for confidentiality in line with the relevant legal provisions<sup>2</sup> and the Authority's published guidance on the

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<sup>1</sup> The Telecommunications Law of the Kingdom of Bahrain, promulgated by Legislative Decree No. 48 of 2002.

<sup>2</sup> Including Article 23 of the Law.

treatment of confidential and non-confidential information.<sup>3</sup> Where such confidential information is included, respondents are required to provide both a confidential and a non-confidential version of their submission (in soft copies and not scanned copies). If part or all of the submission is marked confidential, reasons should be provided. The Authority may publish or refrain from publishing any document or submission at its sole discretion.

## 2 STATUS OF THIS CONSULTATION PAPER

- 2.1 This consultation paper is issued in accordance with the Position Paper on How the TRA Consults issued by the Authority on 17 October 2017.
- 2.2 The information in this document is intended to provide background on the Position Paper. Interested parties should not take any action in reliance on the information or proposals contained in this document. Any views set out in this document should be considered as indicative and will be subject to further consideration following receipt of comments from interested parties.
- 2.3 The consultation document does not represent a decision of the Authority. The issues discussed in this document remain open to consideration and should not be construed as indicating that the Authority has formed any final opinion or decision on the Position Paper.
- 2.4 Once the Authority has received and considered responses to this consultation document, the Authority will decide whether to proceed to finalise the Position Paper. If appropriate, the Authority will prepare and publish a consultation report which summarises and responds to the comments received.

## 3 BACKGROUND

- 3.1 The Authority has previously issued two Position Papers which set out the Authority's approach to the regulation of Voice over IP ("**VoIP**") services under the existing licensing regime under the Law, namely the:
  - (a) Position Paper on the carriage of Voice calls using the Internet Protocol (IP) dated 17 April 2004 (MOU/DC/268) ("**2004 VoIP Paper**"); and
  - (b) Position Paper No.1 of 2007 on Regulation of Voice over Internet Protocol ("**VoIP**") Services dated 30 May 2007 (LAU/0504/054) ("**2007 VoIP Paper**").
- 3.2 Since the 2004 VoIP Paper and 2007 VoIP Paper were published, there has been substantial growth in the use of over-the-top ("**OTT**") voice and messaging services in the Kingdom of Bahrain, which are often utilised on mobile phones.
- 3.3 It has broadly been technology that has led to the increasing role of OTT services and more broadly changes in the delivery of telecommunications services. For example, the increased capability of 4G to deliver IP packets in a reliable manner has made VoIP over mobile networks possible, and the advent of Wi-Fi calling has allowed voice services to be delivered in different ways. It is likely that technology will continue to

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<sup>3</sup> Guidance Paper No. 2 of 2007, TRA Treatment of Confidential and Non-Confidential Information.

evolve, allowing more OTT services, changing the way that telecommunications is consumed, and changing the structure of the industry.

- 3.4 The Authority has considered the regulatory approach of OTT voice and messaging services in other jurisdictions. For example, under the current European communications regulatory framework, the Court of Justice of the European Union confirmed in 2019 that pure OTT services are not electronic communications services and therefore not subject to regulation.<sup>4</sup> Under the new European Electronic Communications Code<sup>5</sup> which will come into force in December 2020, OTT voice and messaging services may be considered as either Number-Based Interpersonal Communications Services (“**NB-ICS**”) or Number-Independent Interpersonal Communications Services (“**NI-ICS**”). A distinction is made between those interpersonal communications services that connect with publicly assigned numbering resources or which enable communication with a number in a numbering plan (i.e. NB-ICS), and those services that do not (i.e. NI-ICS). Since NI-ICS do not benefit from the use of public numbering resources and do not participate in a publicly interoperable ecosystem, it is considered appropriate for providers of these services to be subject to fewer regulatory obligations. In most cases, such obligations are only applicable to “publicly available” services, and typically relate to security and consumer protection requirements.

## 4 THE PROPOSED POSITION PAPER

- 4.1 The purpose of the proposed Position Paper set out in **Annex 1** is to update the Authority's position in relation to IP-based or OTT voice and messaging services. In doing so, the proposed Position Paper:
- (a) consolidates the 2004 and 2007 VoIP Papers, and clearly states that it supersedes the previous Position Papers;
  - (b) replaces the classification of the four different types of VoIP services as described in 2007 VoIP Paper, with a more simplified categorisation that distinguishes between number-based OTT voice and messaging services (“**Number-Based Services**”) and number-independent OTT voice and messaging services (“**Number-Independent Services**”);
  - (c) clarifies that Number-Independent Services do not qualify as Telecommunications services and are not subject to the licensing requirement pursuant to Article 24(a) of the Law;
  - (d) clarifies that the provision of Number-Based Services may be authorised under one or more of the following Individual Licences:
    - (i) National Fixed Licence;
    - (ii) International Services Licence;
    - (iii) National Fixed Wireless Service Licence; and/or

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<sup>4</sup> See the Judgments of the Court (Fourth Chamber) of 5 June 2019 in Case C-142/18 (regarding SkypeOut) and of 13 June 2019 in Case C-193/18 (regarding Gmail).

<sup>5</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

- (iv) Individual Mobile Telecommunications Licence;
- (e) clarifies that under the Internet Service Provider Licence, the prohibition on providing “basic voice services” includes Number-based Services and does not extend to Number-Independent Services; and
- (f) confirms that the Law applies to all Number-Based Service providers irrespective of the jurisdiction of their establishment and the location of their technical equipment, if they effectively, deliberately, and purposefully direct their activities to residents of the Kingdom of Bahrain.

## 5 **CONSULTATION QUESTIONS**

- 5.1 The Authority invites respondents to provide comments in response to each of the questions listed for reference at **Annex 2**. However, the Authority welcomes responses on any aspect of this Position Paper.