

The Iraqi National Communications And Media Commission



# Iraqi Mobile License Issues Consultation Paper

The World Bank commented on this paper at the drafting  
Stages. Its comments have been incorporated into the  
document.

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## 1 INTRODUCTION

In December 2003, the Coalition Provisional Authority (CPA) issued three mobile licenses following a competitive tender. These licenses were regional in scope, although they included provisions allowing licensees to roll out nationally if they were successful in meeting certain agreed objectives set forth in the licenses. The three winning bidders were Orascom Telecom Iraq Corp. in the Central region, Asiacell in the North, and MTC Atheer Telecom in the South. All incumbents started to expand nationwide around January 2005.<sup>1</sup>

In March 2004 the CPA's Order 65 established the Iraqi National Communications and Media Commission (NCCMC). The Order established the authority and responsibilities of the NCCMC, including the award and management of telecommunications licenses, broadcasting, media and information services as well as spectrum allocation and management. The three existing mobile licenses will expire at the end of December 2005 and therefore the NCCMC is preparing to issue a number of long-term mobile licenses to replace those awarded by the CPA in 2003.

In line with international best practices, the NCCMC is issuing this paper to the public, the Government, private sector, consumer associations, international regulating bodies, major financial institutions, and potential bidders to obtain feedback, comments, suggestions and answers to the issues raised in this document. All comments, suggestions, and feedback will be published on the NCCMC website. This process will ensure the transparent and equitable treatment of all potential license bidders and will invite public comments and suggestions for incorporation into the new licenses.

The NCCMC intends to follow this initial consultation paper with a conference to discuss the feedback, suggestions and comments received from the recipients. The views of the participants in the conference will be heard and debated with the goal of forming a consensus. The most appropriate views and comments will then be incorporated in the draft mobile license terms and conditions, which will be issued with the Request for Proposal (RFP).

The NCCMC expects to issue the RFP inviting bids during the second half of 2005, followed by a first phase qualification process to determine the most qualified bidders based on technical, commercial, legal, and business evaluation criteria.

The process is expected to be completed, and the licenses awarded, around the expiration date of the licenses.

## 2 POLICY AND REGULATORY OBJECTIVES

The NCCMC and the Government of Iraq's objectives for the future of Iraqi telecommunications, including with respect to the issuance of new licenses later this year, are to ensure that high quality services are available to the population at affordable prices, including, but not limited to:

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<sup>1</sup> Orascom IraQna has disputed the NCCMC decision not to allow it to roll out nationally for failing to meet its license obligations and claims that the reasons for not doing so were outside its control. This dispute has not yet been resolved.

- Enabling customer access to networks from homes, offices and vehicles regardless of whether they are located in urban or rural areas.
- High quality coverage throughout populated areas and along main highways and roads.
- Adherence to verifiable Quality of Service measures throughout the range of services provided.
- Efficiently engineered networks for optimum utilization of the radio frequency spectrum.
- Packages and tariffs that address the business and residential needs and take into account a wide range of incomes.
- Rapid network roll-out according to an agreed roll-out plan.
- Commitment to continued development of the Iraqi economy by undertaking rapid employment and training programs.
- Use of Iraqi national resources, materials and manufacturing.
- Employing state-of-the-art equipment and technology that is able to be upgraded and expanded to incorporate future advances in technology.
- Offering a full range of services to customers, including voice, data, Internet, voice mail, and SMS services.
- Directory services and customer care benchmarks that comply with international best practices.

### 3 CONSULTATIVE ISSUES

The NCMC recognises that many issues will need to be considered before new mobile licenses are issued, including the following:

- Termination of Existing Licenses
- Number of Licenses
- Tariffs
- Mobile Virtual Network Operator Licenses (MVNOs)
- National or Regional Licenses
- Timing of License Award
- Term of License
- Exiting vs. New Entrants
- Competition / Liberalisation / Exclusivity
- Bidding Formula
- Limited Pre-Negotiation of License Obligations
- Rules on Transferring Licenses
- Government Ownership
- Policy Objectives
- Monitoring
- Emergency Access Numbers Obligations
- Legal and Regulatory Framework
- Legal Intercept
- Nondiscrimination / Universal Service/ Access

- Price Regulated Services
- Consumer Protection
- Permitted Services
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- Distribution Channels
- Spectrum Issues
- Universal Technology
- Access to Facilities
- Number Portability
- Numbering Plan
- Premium Numbers
- Customer Service
- Directory Service
- International Roaming
- Interconnection
- License Fees
- Spectrum Management Fees
- Revenue Sharing
- Quality Targets
- Statement of Existing Governing Law
- Arbitration and Appeals
- Penalties
- Tender Process
- Local Participation and Development
- Transition Issues

The NCMC seeks comment on each of these issues, which are introduced in turn below.

### **3.1 Termination of Existing Licenses**

The NCMC calls for high transparency and openness in undertaking this consultative process and is looking for comments and suggestions from all stakeholders (including existing licensees, prospective bidders, the Government, the private sector, consumer associations, and the international community) on the process of terminating existing licenses. Key issues include the timing of termination, the process of termination, and what legislative processes (if any) are needed for terminating the incumbents' licenses.

### **3.2 Number of Licenses**

Although the three current license operators have been expanding their services nationwide since January 2005, none has managed to build up its network coverage and density sufficiently to be considered an effective competition to the original incumbent in that region. By the time the new licenses are awarded, there may be viable competition throughout Iraq.

Unforeseeable market developments will determine the optimal size of the mobile communications market, the financial viability of operators, and, as a consequence, the optimal number of players. The NCMC is therefore looking for comments and suggestions as to the optimum number of licenses to award.

The NCMC aims to encourage greater competition by awarding a sufficient number of licenses to create a real competitive environment and allowing market forces to play a role in the survival of the licensees.

In an effort to determine the total number of licenses, the NCMC is also looking for comments and input on the total number of mobile licenses that should be awarded in the 900 MHz, 1800 MHz, 1900 MHz, and 3G bands.

### **3.3 Tariffs**

The NCMC considers tariffs to be an important factor in stimulating the growth of the telecom sector in Iraq. Bidders must provide sufficient information on the basis for charging for basic packages, value added services, standard monthly charges, and any excess per minute charges.

To encourage competitive practices, the NCMC is looking for market forces to drive tariffs to a manageable level. However, in circumstances where effective competition should be enforced, the NCMC may consider introducing a price cap or publishing tariff formulas until it feels that competition is sufficiently regulating pricing in the market.

The NCMC invites comments and suggestions on these issues and their impact on the investment and total revenues if such measures are introduced.

### **3.4 Mobile Virtual Network Operator Licenses (MVNOs)**

Mobile Virtual Network Operators (MVNOs) have been a trend that started in Europe in the mid 1990s as a way of promoting competition in mobile communications services rather than building and operating networks/technologies. An MVNO represents an efficient entry point for licensees whereby they purchase capacity from existing network operators, add their own brand name, customer service, and billing systems and then sell this package to their customers. MVNOs can also stimulate infrastructure investments by adding a new revenue channel for infrastructure providers.

The NCMC is looking to explore the possibility of offering one or more MVNO licenses in the future to stimulate competition should the total market size justify such an introduction.

### **3.5 National or Regional Licenses**

The NCMC is considering issuing national licenses to all winning operators to ensure competitiveness and market control of tariff levels.

### **3.6 Timing of License Award**

Three issues that the NCMC considers as having an important impact on the success of the tender process and its goal of attracting investors are:

- (i) ***Security Situation in Iraq.*** The NCMC is cognizant that many large multi-national operators may be hesitant to build networks in Iraq unless the security level is improved and the risk to workers and assets is reduced. The NCMC is looking for comments on the impact of the security issues on the business of the winning bidders.
- (ii) ***Aggressive Timetable.*** The NCMC aims to award licenses at the same time as the existing licenses expire at the end of December 2005. To achieve this objective, the NCMC must complete the bidding process and announce the winners within six months of releasing this consultation paper. Considering the time required for the administration, evaluation and negotiation of bids, there may not be sufficient time for potential investors to develop adequate consortia, partnerships, shareholder agreements, and financing packages or to complete their bid response packages. The NCMC is concerned that expediting the completion of bidder selection and awarding the licenses within the next six months may negatively impact the mobile sector performance in Iraq for several years to come. The NCMC is considering the option of providing the bidders an adequate period to prepare for the bids if that appears more appropriate. The NCMC is seeking comments on the time needed for bidders to adequately prepare their bid packages.
- (iii) ***Adequate Transition Time.*** The NCMC aims for seamless and transparent transition from incumbents to new licensees. Adequate time should be allotted to enable effective and smooth transition. The current license terms sets the transition period to be 6 months. The NCMC is looking for comments and suggestion of a practical transition period and process to which both incumbents and new licensees must adhere in order to ensure an effective handover of customers.

### **3.7 Term of License**

The NCMC believes that an initial license term would be 15 years, which is generally considered to be long enough to give potential investors adequate time to recover and earn a healthy return on their capital investment. The NCMC is also considering an automatic extension of 5 years, if the licensee meets the requirements set forth in its license.

### **3.8 Exiting vs. New Entrants**

The NCMC is considering whether operators will be asked to bid on the licenses only, or also on the existing networks.

There are three incumbent mobile operators with varying network development levels in each region and, in order to ensure transparency and equitable treatment to all potential bidders, the NCMC will allow them to bid for the new licenses.

The NCMC is inviting comments and suggestions from all potential applicants on the following issues:

- Rules that could be adopted to level the playing field between the existing operators and new applicants, considering that existing operators have substantially built their networks over the past two years and recovered a significant part of the capital cost. These operators have clear advantages in the area of site acquisition, which is a crucial parameter in the preparation of business plans in the context of bids for mobile licenses.



- Whether the NCMC should consider commissioning a special study to explore the options available to ensure that an advantage gained by the incumbents will not affect the opportunities of new bidders.
- Whether the NCMC should introduce additional rules for the bidding process to enable applicants to bid either for licenses only or for licenses and existing networks and, if so, how such rules would apply to incumbents.
- The NCMC is considering the option of allowing the winning bidders to enter into a post-bid liquidation and auction of assets of existing operators. The NCMC would engage one of several international companies experienced in auctioning all or parts of the existing mobile businesses, including network infrastructure, frequencies, clients, brand, and employees.

### **3.9 Competition / Liberalisation / Exclusivity**

NCMC policy is to encourage liberalisation and competition of the telecommunications market. In order to stimulate competition, the NCMC reserves the right to award further fixed line, fixed wireless and mobile communications licenses in the future.

The NCMC is considering that new mobile licenses may not have an exclusivity period or guarantees of non-competition.

### **3.10 Bidding Formula**

To ensure transparency and to allow an immediate award of the licenses, the NCMC is considering awarding licenses to the highest "qualified" bidder, provided that the bidder meets the qualification criteria as outlined in the section 3.40, entitled "Tender Process".

### **3.11 Limited Pre-Negotiation of License Obligations**

The NCMC is looking to receive general suggestions, opinions and input on the specific conditions and obligations that will be incorporated in the terms of the mobile services licenses. Input may be submitted through the bidders' conferences that the NCMC plans to hold, as well as through the NCMC website. Certain feedback received by NCMC will be incorporated into the terms of the license agreement, which will be issued together with the RFP and will form part of the bid package.

### **3.12 Rules on Transferring Licenses**

The NCMC is considering issuing clear rules governing the ability of licensees to sub-license, transfer, assign, grant rights, mortgage, sell, or pledge their licenses to others. The NCMC is looking into requiring licensees to provide valid justification and obtain approval from the NCMC before transferring, selling or subletting their licenses.

The licenses will also provide clear instructions on the requirements for the certainty and stability of shareholder agreements of bidding consortiums, as well as detailed rules on associations among bidders during and after the bidding process.

The NCMC is also seeking to draft rules addressing the re-tendering of a license where an operator has become insolvent.

### **3.13 Government Ownership**

To limit any foreign government control of the telecommunications business in Iraq, the NCMC will require that no bidder have more than 10% total ownership by any government entity. For the purpose of identifying the total government ownership in a consortium or association, the NCMC will include all members of consortiums or associations that are fully owned by a government, partially owned by a government, or parents, subsidiaries or affiliates thereof.

### **3.14 Policy Objectives**

The NCMC is looking for comments and suggestions for developing a set of rules that will encourage fulfillment of its policy objective of achieving balance between maximizing sector proceeds and meeting economic development criteria such as speed and coverage of roll out, quality of service, and affordability of services.

### **3.15 Monitoring**

The NCMC intends to develop rules to be incorporated into licenses or adopted as NCMC regulations for monitoring the licensees' compliance with license conditions and applicable law. Licensees will be required to provide regular financial, technical, and operational reports. The NCMC is inviting comments on the reporting requirements that it should adopt, as well as how it should conduct examinations, investigations or audits of licensees' operations.

### **3.16 Emergency Access Numbers Obligations**

To enable public access to emergency services, police, ambulance and fire, the NCMC is requesting comments on requiring licensees to provide, free of charge, public emergency call services to all of their customers. The NCMC plans to require all licensees to provide a common emergency call access code to their customers and invites comment on how to incorporate this requirement into license terms or NCMC regulations.

### **3.17 Legal and Regulatory Framework**

The NCMC is in the process of writing a new telecommunications law to be presented to the new Iraqi legislature. Licensees will be required to comply with the telecommunications law, as well as any current and future NCMC regulations, administrative rulings and procedural rules. The NCMC is and will be able to sanction operators pursuant to these laws and rules, including, where appropriate, by revoking a license. The NCMC is inviting comments and suggestions from potential bidders on the regulatory framework governing telecommunications.

### **3.18 Legal Intercept**

The telecommunications law may incorporate rules to require, as part of the standard telecommunications service provisions, each network operator to have the technical capability to legally intercept and provide information on messages transmitted over its network. The Iraqi legislature may also adopt separate laws permitting law enforcement authorities to legally intercept telecommunications. In either case, such intercept will be in accordance with applicable law, will be provided by each operator as part of its network build-out, and will meet internationally-accepted standards for such technology.

### **3.19 Nondiscrimination / Universal Service/ Access**

In an effort to offer services to the public on a non-discriminatory basis, the NCMC will require that services cannot be denied, suspended, or revoked in whole or in part, based on gender, race, religion, or location. Licensees will be required to guarantee minimum levels of geographic and population coverage and to comply with the universal service / universal access obligations set forth in their licenses.

### **3.20 Price Regulated Services**

Pricing, discounts and special offer policies will be left to the discretion of the operators. The license will give the licensee the rights to introduce and publish new prices and discounts without prior regulatory approval.

The licensee will be obligated to provide transparent and non-discriminatory pricing and discount schemes. The NCMC will intervene only in cases of anti-competitive pricing.

The NCMC is inviting comments on the options available to ensure practical competitive practices in the market with minimal governmental or regulatory interference.

### **3.21 Consumer Protection**

The licensee will be obligated to publish its standard terms and conditions, including tariffs for each category of service offered to subscribers and users. The licensee will be obligated to file this information with the NCMC and allow inspection by the NCMC. In order to protect consumers, licensees will be obligated to:

- Safeguard privacy, confidentiality, personal data and all messages transmitted over the Mobile Network and comply with all applicable laws related to privacy.
- Provide detailed itemized billing for local and international calls and publish conditions for charging for itemized billing.
- Publish an appropriate code of practice (“consumer code”) for the resolution of all types of disputes.
- Provide procedures for recording and responding to complaints and disagreements against the licensee and for resolving complaints and disputes.
- Provide refunds and otherwise compensate subscribers or prospective subscribers where they fail to meet minimum service quality requirements.

- Report to the NCMC on certain items, such as their progress in meeting obligations under their licenses and on compensation received in connection with complaints or disagreements.
- Ensure that any equipment, data or procedures used to measure or to track the provision of services are accurate and reliable.
- Establish a consumer council for gathering and representing the views of customers.

In order to meet its consumer protection and other goals, the NCMC will have the right to change the terms and conditions of any operator's license in accordance with the law.

### **3.22 Permitted Services**

The licenses will enable mobile network operators to provide voice, text, data and Internet services using their mobile equipment. In addition, operators will be able to offer all Value Added Services (VAS), as those services are defined according to international standards.

### **3.23 International Access**

The NCMC is considering three options available to licensees for obtaining international access:

- Provide direct international traffic through their own international gateway
- Obtain their international traffic from the Iraqi Telecom and Post Company (ITPC)
- Use licensed third-party wholesale international traffic distributors

The NCMC would like to receive suggestions as to how to regulate international access so that it is the most economically efficient.

The NCMC is considering limiting the use of international traffic to only the licensee's direct customers and prohibiting the sale of international traffic to other licensed or unlicensed entities. Comments on this proposed limitation are requested.

### **3.24 Distribution Channels**

The NCMC invites comments on the possibility of requiring licensees to use direct, indirect, or virtual distribution channels when marketing their services in order to further the NCMC's goal of encouraging the development of the local economy.

The NCMC invites comments from potential bidders as to how to enable third parties to provide a major part of the sale and distribution for subscriber services and equipment.

### **3.25 Spectrum Issues**

The frequency band that the NCMC is considering for the mobile licenses extends from 880 - 915 MHz downlink paired with 925 - 960 uplink. The NCMC also invites bidders wishing to utilize technologies in the 806-825 MHz uplink paired with 851-870 MHz downlink.

The NCMC is looking to receive comments and suggestions from potential bidders on how to allocate these bands to licensees efficiently.

The NCMC also invites potential bidders to comment on whether it should divide the entire band equally between the winning licensees at the outset or allocate the band according to each licensee's uses or needs. Any allocation would take into consideration the need to reserve guard bands between operator allocations as specified in the technology standards in order to minimize inter-operator interference.

NCMC also seeks comments on whether to allocate half of the band at the time of the initial award and wait to allocate the remaining half at some time during the life of the license if the operator is able to provide technical data showing that it has fully utilized the initial allocation.

### **3.26 Universal Technology**

The NCMC will not impose a specific technology and aims to enable existing subscribers to continue receiving service using their current technologies; however, any technology that is adopted by a winning bidder should:

- 1 Operate at the frequency band outlined in the "Spectrum Issues" section of this document;
- 2 Be able to allow roaming among other licensed mobile operators of the band; and
- 3 Allow international roaming from other regional and international networks.

The NCMC seeks comments on the available technologies that would be appropriate for the frequency band, as well as comments on implementing national and international roaming among networks deploying different technologies.

### **3.27 Access to Facilities**

The NCMC intends to develop good environmental practices and is, therefore, considering requiring operators to adopt efficient means of reducing the number of transmission towers and antennas. This reduction in duplication of assets will also reduce cost to operators and ultimately benefit consumers through lower tariffs. It is also evidence of the shift towards service, rather than network, competition. The NCMC is inviting comments and views on requiring new operators to adhere to provisions for mast and facility sharing as far as practically and technically possible. Such provisions would require any operator not to unreasonably refuse a request from other operators to share mast, space, or facilities, or otherwise co-locate network equipment.

The NCMC is looking to introduce terms setting licensees' rights, obligations, permissions, and authorisations to access land to build their assets and service their installations. In particular, licenses will provide access for licensed mobile networks to be installed or connected to customers' premises, and to pass over, under, in or across any public right of way, to the extent practically and reasonably possible. The license will also set time limits for completion of any agreement regarding access.

### **3.28 Number Portability**

Number portability has been successfully implemented in many networks around the world. This feature is equally important for business and private users.

The NCMC is looking to require licensees to implement number portability at the outset of the license award for new customers and within 12 months for customers of existing operators.

### **3.29 Numbering Plan**

The NCMC will be responsible for allocating the numbering plan to licensees, establishing the use and purpose of allocated numbers, managing and conserving allocated numbers as a public resource, and establishing fees and rules for charging customers for the allocation of numbers and the provision of number portability.

### **3.30 Premium Numbers**

The NCMC invites comments on enabling licensees to offer customers certain premium prefixed telephone numbers such as 800 and 900 derivative numbers. As these numbers are part of the national numbering plans, they will not be subject to number portability provisions of the license. The NCMC is considering requiring operators to offer these numbers to customers at the outset of their operations following consultations with the ITPC.

### **3.31 Customer Service**

The NCMC considers customer satisfaction of paramount importance. Customers should have easy recourse to address all problems relating to call quality, service quality, billing and other service-related issues through telephone, on-line, and Internet-based customer service representatives. Licensees should provide customer service facilities that will address all customer service issues.

The NCMC is also looking for comments on licensees' response to complaints and their dispute resolution processes, which should follow published timelines and procedures.

The licensees will be required to assign abbreviated and free telephone numbers for customer service access.

### **3.32 Directory Service**

The NCMC is looking for comments on whether operators should offer directory service for all customers, whether this service should be free or for a fee, and how quickly this service should be available after the award of the license. Such a service could require licensees to provide directory information services and operator assisted services, to provide a complete and accurate database of subscribers' numbers, to co-operate with all other licensed operators in supplying a comprehensive and accurate directory that includes their subscribers, to limit the use of directory information provided to it by any other licensed operators, to protect customer data, and to assign abbreviated and free telephone numbers for directory service access.

### **3.33 International Roaming**

The NCMC considers it essential for all operators to implement international roaming and will require bidders to provide letters of intent stating that they will provide both local and international roaming for their customers and those of other licensed operators.

The NCMC seeks comments on the timing of the introduction of this service by licensees.

### **3.34 Interconnection**

The NCMC requires that licensees enter into an immediate agreement for interconnection with:

1. The ITPC for interconnection to their fixed line based customers
2. All other licensed mobile operators; and
3. Private or public international traffic providers.

Mobile operators will be given the right to carry their calls through their networks and the interconnection to third party networks will be done at the nearest point to the call destination.

Mobile operators must enter into good faith agreements regarding tariffs and capacity with the third party directly. No operator may unreasonably deny interconnection from other licensed operators.

Interconnection agreements must be concluded within 90 days of the license award and operators must agree that if an agreement has not been executed by that date the NCMC will issue a decision establishing interconnection terms that will be final and binding on both parties. Parties who are not satisfied with the NCMC decision will have the option of instituting the procedures outlined in “Arbitration and Appeal” section of this paper.

Licensees will be obligated to provide the NCMC with copies of any and all interconnection agreements, and the NCMC will have the right to demand changes to any interconnection agreement to ensure that it complies with the applicable law, regulations and rules.

### **3.35 License Fees**

The amount of upfront fees depends on several factors, including the number of licenses, the competitive outlook, and the country risk. The NCMC invites comments on whether the license fee should be paid in one or more than one installment and the procedures and consequential actions that should be adopted by the NCMC in cases of delayed payments.

License fees shall be determined through multiple rounds of bidding as outlined in the “Tender Process” section of this paper.

### **3.36 Spectrum Management Fees**

In addition to the license fees, the NCMC is considering requiring operators to pay an annual spectrum management fee to the NCMC. This fee will recover the costs of the equipment and manpower that the NCMC will expend to manage the licenses.

### **3.37 Revenue Sharing**

NCMC is considering, as part of the license requirements, adopting either (i) revenue / profit sharing paid on an annual basis by the licensee or (ii) imposing a fixed annual “mobile royalty” payment that is paid by each licensee.

The NCMC is inviting potential bidders to provide comments and suggestions on these options and their impact on the license fees to be paid by the licensee.

### **3.38 Universal Access Fee**

The NCMC invites comments on charging licensees a universal access fee based on a percentage of their net revenues for the development of low cost telecommunications service in rural and economically deprived areas of Iraq. The services will range from installing and maintaining subsidised payphone service in villages to transparently providing grants to offer mobile services to areas where coverage is not economically viable.

### **3.39 Quality Targets**

The NCMC intends to establish quality targets for each type of service and invites comments on quality standards for each of the following:

- Network coverage roll-out
- Level of coverage within each part of the region and highways
- Quality of Service (QoS); and
- Customer complaints and dispute resolution

### **3.40 Statement of Existing Governing Law**

Order 65, as amended, officially revoked any previous telecommunications legislation and regulation existing from the previous regime, and now forms the sole basis for telecommunications law in Iraq. As noted before, concurrent to this process of awarding new cellular licenses, the NCMC will be proposing a new telecommunications law. Details of this law will be communicated to all potential bidders active in the process. In addition, the NCMC will make all possible efforts to inform potential bidders of any other laws and/or regulations now enacted, or still in force, that may govern matters of interest to them.

### **3.41 Arbitration and Appeals**

The NCMC intends to develop rules and procedures for the following:

- Disputes related to quality target issues
- Role of the NCMC in administering judgments
- Appeals process
- Arbitration process

The NCMC is inviting comments and suggestions on the appointment of an independent arbiter to resolve impasses or arguments between negotiating parties on any issues related to licensed mobile communications, as well as the process through which licensees may appeal decisions of the NCMC.

### **3.42 Penalties**

The NCMC is looking for comments on the establishment of penalties for violations of license terms and NCMC rules, including the types of penalties, escalation and severity of those penalties. The NCMC is considering penalizing the following:

1. Failure to achieve roll out targets



2. Failure to achieve quality measures
3. Failure to submit reports and data in a timely manner
4. Violation of NCMC rulings or instructions
5. Changes to the company's composition without prior NCMC notification and approval
6. Denial or falsification of financial reporting data

### **3.43 Tender Process**

The NCMC will take all necessary measures to ensure transparency and fairness throughout the tender process, which will include the following:

- The NCMC will hold an international conference of potential bidders and other stakeholders to gather and discuss feedback on this consultative paper.
- The NCMC will issue a Request for Proposals (RFP) setting forth license terms and detailing clearly all requirements for completing the license application.
- The NCMC will appoint an internationally renowned and independent consulting company with technical, commercial, legal, and business experience to assist in the bidding process. This firm will have a proven record of managing a number of similar bidding processes for telecommunications licenses.
- This firm will determine applicants' compliance with the terms of the RFP, examine their responses to ascertain their technical and commercial quality, and make recommendations to the NCMC as to whom should pass to the financial evaluation phase of the bidding process.
- This firm will also be charged with negotiating and managing the multiple rounds of the financial bidding process. The bidders who have qualified in the first round of evaluations will be asked to submit sealed bids, which will be opened and publicly announced at the same time. Bidders will then be invited to submit a revised financial bid for the next round. The bidding process will continue until the NCMC has reduced the number of bidders to the number of licenses that will be awarded.
- In line with international best practices, the bidders who advance to the financial evaluation round will be required to submit a financial bond to ensure their commitment to continue with the bidding process and not withdraw prematurely. Premature withdrawal will result in surrender of the bond amount, but bidders who are not selected in sequential rounds will have their bond returned. Details on rights and responsibilities on proposal withdrawal before the financial evaluation round, as well as details on proposal modification rights, will be contained in the RFP. Also in the RFP will be terms and conditions on the confidentiality of the substance of proposal terms, publicity rights retained by the NCMC, and details on the payment currency and mechanics of bonds, and the intellectual property and patent rights of applicants and bidders.
- The NCMC is keen on arriving at the number of winning licenses as quickly as possible and will make every effort to ensure that the process is done in most efficient and expeditious fashion.

### 3.44 Local Participation and Development

The NCMC views participation of local investors as an important part of its strategy to develop local telecommunications capabilities and generate business for local suppliers. The NCMC is looking for comments and suggestions on

- Utilizing Iraqi resources to the maximum extent possible, and inclusion of Iraqi local partners in bidding consortiums with appropriate roles and voting rights.
- Developing the local economy through guaranteed hiring of local employees at all levels, including management.
- Establishing training programs for employees and contributing to the development of telecommunication standards in Iraq through sponsorships and grants to local institutions and universities.
- Guaranteeing the purchase of goods and services from local markets for the same quality and price as are obtained from outside Iraq.

The NCMC is inviting bidders to comment on other ways for improving the economic situation in Iraq for the first 10 years after the award of the licenses.

### 3.45 Transition Issues

The current licenses require that incumbents coordinate with new licensees for a period of six months in order to provide a smooth transition to the new licensees and to ensure continuity of service to the existing customers. The NCMC will require any winning bidders to coordinate with incumbents for a transparent transition of customers and services to the new networks within this six-month period.

The NCMC is inviting comments on (i) available options for transitioning existing licenses, (ii) the length of the transition period (iii) any transfer of assets (infrastructure, clients, branding, sites) between existing and new licensees, (iv) who will maintain the service during the transfer and (v) how subscribers will be transferred.

The NCMC is inviting comments as to whether, in cases where an agreement cannot be reached between existing and new licensees, the NCMC should appoint an independent arbiter to resolve the matter and whether the arbiter's decision should be able to be appealed in Iraqi courts.

The NCMC is inviting comments on what legislative requirements might be included in Iraqi legislation to bind the incumbents to cooperate effectively in a successful transition.

The NCMC is also interested in receiving comments on options that can assist incumbents' transition process such as:

- Extending the license term of the losing incumbent to allow adequate time to transition.
- Forcing the sale of the losing incumbent's network to one of the winning bidders and appointing the winner to manage the transition.
- Expropriating the losing incumbent's network and appointing interim management to operate the network until the transition is completed.