



**ADDENDUM TO THE INFORMATION MEMORANDUM**  
**LICENSING THE 700 MHz BAND**  
**(Channels 54 – 69 i.e.698 - 806 MHz)**

**August 30, 2013**

**...Shaping Your Future with Wireless...**

This Addendum to the Information Memorandum ("**Memorandum**") has been prepared by the Spectrum Management Authority (SMA) in collaboration with the ICT Division within the Ministry of Science, Technology, Energy and Mining (MSTEM) in connection with the proposed award of Spectrum Licences in the 700 MHz frequency band by auction. The Addendum shall be deemed to form and be read and construed as part of the Memorandum – Licensing the 700MHz Band, issued on 2013 April 15, and as such, all other terms, conditions and interpretations outlined in the Memorandum remain in effect.

The Memorandum outlined the Policy, Regulatory and Technical considerations underpinning the auctioning of the 700 MHz band. Initial queries/comments were received and as far as possible responses were provided to these queries/comments. In light of the comments received and after further consideration the SMA and the MSTEM are proposing adjustments to the auction package and design. Outlined herein are the proposed changes to the auction package and design which changes will be discussed at the Public Forum scheduled for **September 10, 2013 at 10:00 a.m. at the Jamaica Conference Centre**, 14-20 Port Royal Street, Kingston.

This Addendum to the Memorandum, along with all referenced documents, may be obtained from the following websites:-

- [www.sma.gov.jm](http://www.sma.gov.jm) – SMA
- [www.mstem.gov.jm](http://www.mstem.gov.jm) – MSTEM

Interested parties are encouraged to participate in the public forum. However, comments may also be submitted in writing to:

**The Auction Manager  
C/O Spectrum Management Authority  
13-19 Harbour Street  
Kingston  
spectrumauction@sma.gov.jm**

The deadline for submission of comments is **September 10, 2013**.

## 1.0 SPECTRUM PACKAGING

The primary objective in packaging the spectrum is to ensure the most efficient use of the spectrum in the deployment of mobile broadband and/or IMT- Advanced (4G), while taking account of future services and spectrum requirements for these services.

In the interest of encouraging the development of a competitive mobile market and to preclude spectrum hoarding in Jamaica, two (2) initiatives were originally contemplated. These are (1) the imposition of an aggregate spectrum cap and (2) the imposition of an in-band spectrum cap. The proposed aggregate cap was 80 MHz and the proposed 700 MHz in-band cap was 2 x 12 MHz.

Based on comments received and further deliberations by the SMA and the MSTEM, as mentioned before, the decision has been taken to not impose the in-band cap. With respect to the aggregate cap, the SMA issued a Notice of Proposed Rulemaking on August 12, 2013 and a decision with respect to same will be taken after comments in relation to that exercise are evaluated.

### (a) Package Details

#### **Band 17:**

- ▶ The entire block 1 i.e. 2 blocks of 12 MHz at 704-716 MHz and 734-746 MHz, paired

#### **Band 13**

- ▶ The entire block 2 i.e. 2 blocks of 12 MHz at 746-758 MHz and 776-788 MHz, paired

### **Incentive package for new entrants:**

All successful new entrants that acquire 2x12 MHz of spectrum or more will be entitled to the following:-

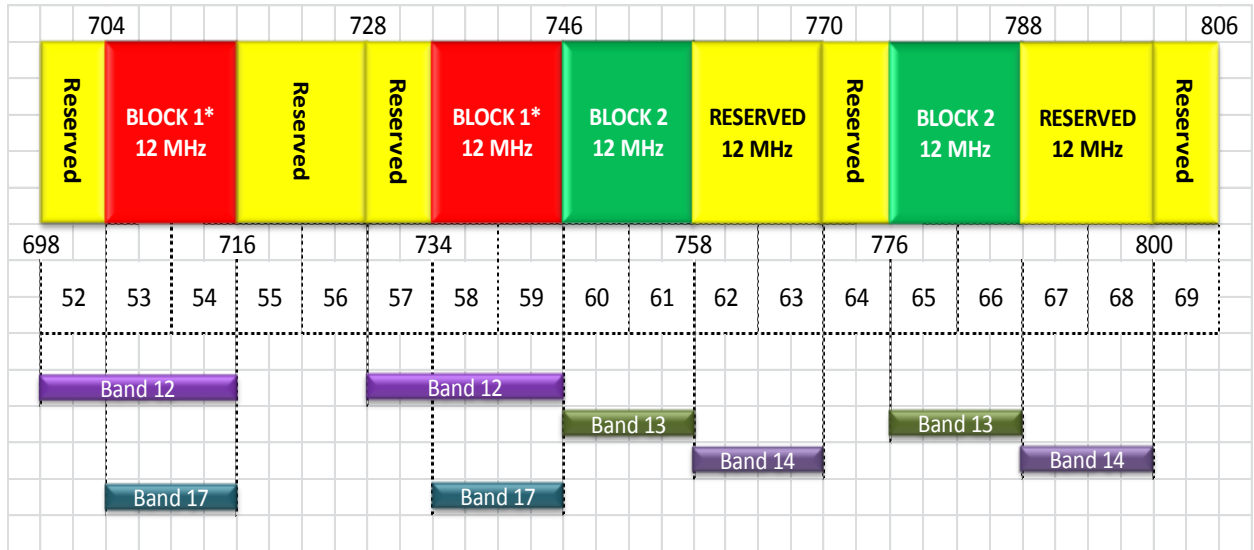
- ▶ 2x5 MHz in the 1800 or 1900 MHz band for the period of fifteen (15) years which is exempted from the payment of Spectrum Licence fees.
- ▶ Backhaul frequencies for reasonable rollout (i.e. 40%) for a period of two (2) years after which time Spectrum Licences Fees will be applicable.

In relation to the above mentioned incentives, Spectrum Regulatory Fees will be applicable on an annual basis upon the start-up of operations (i.e. provision of services to the public).

- ▶ The option of accepting the award of a fibre optic cable licence (if the technical requirements are satisfied) with an extended rollout provision of three (3) years.

It continues to be the position of the Government of Jamaica (GoJ) that band 14 not be made available for commercial licensing at this time. However, this decision is subject to change based on market interest and the most effective use of the spectrum that will redound to the benefit of the people of Jamaica.

See Diagram below for a graphical representation of the spectrum packaging.



## 2.0 THE AWARD PROCESS

This section will outline the process from Request for Bids to Grant of Licence. The Award Process will follow four (4) stages:-

- Stage 1 – Request for Bids
- Stage 2 – Auction
- Stage 3 – Post-qualification
- Stage 4 – Grant of Licence

**Bidders will be responsible for all costs incurred by them in relation to this Auction/Licensing process.**

### 2.1 Stage 1 – Invitation

The SMA will formally issue a Request for Bids (RFB) via public notice and postings on various web-sites including the SMA and the MSTEM websites. Interested parties will be required to register to participate in the auction. Additional details will be provided in the RFB.

## 2.2 Stage 2 – Auction

### 2.2.1 Auction Rules

The auction rules are based on the following principles:

1. The process must be conducted in a fair, open and transparent manner. All parties participating in the auction are expected to conduct themselves in the same manner.
2. The SMA reserves the right to exclude parties that do not or have not conducted themselves in this way.

### 2.2.2 Prohibition of Collusion

Bidders are prohibited from co-operating, collaborating, colluding, discussing or negotiating settlement agreements or other such similar agreements and/or arrangements related to the Spectrum Licences being auctioned or relating to the post-auction market structure. Any such agreements and/or arrangements shall be reviewable *ab initio* by the Fair Trading Commission (FTC) pursuant to the provisions of the Fair Competition Act (FCA); and all Bidders and/or parties hereby recognize, acknowledge and submit to the jurisdiction of the FTC with respect to such agreements and/or arrangements.

Bidders will note that they will be required to submit a declaration certifying that it has not entered and will not enter into any agreements or arrangements of any kind with any competitor regarding the amount to be bid, the amount of spectrum being bid for, or bidding strategies. For the avoidance of doubt, the word competitor means any entity other than the Bidder or connected persons which could potentially be a Bidder in this auction based on qualifications, abilities or experience.

Bidders who engage in this behaviour will risk exclusion from the post-qualification process, or revocation of Spectrum Licence, if this has already been granted.

### 2.2.3 Connected Persons

Where two or more Bidders are deemed to be connected as defined by section 11(6) of the Telecommunications Act (the Act), only one entity may participate in the auction. Therefore, “persons shall be treated as being connected with a given person (“L”) and the person with them, and shall be so treated notwithstanding that at the relevant time any of the persons in question (not being individuals) had not yet come into existence or had ceased to exist:-

- a) a holding company or the subsidiary of L;
- b) any company of which L has control;
- c) any company of which L and persons connected with L together have control; or
- d) any company which together with L constitute a group.”

Section 151 of the Companies Act establishes the definition of holding company and subsidiary for the purposes of this auction.

**Bidders who fail to observe this requirement may be excluded from the post-qualification process, or have its Spectrum Licence revoked, if this has already been granted.**

#### ***2.2.4 Anti-Competitive Behaviour***

Bidders shall not be permitted to enter into any ‘agreement’ as defined within the FCA, with any persons, enterprises, organizations, associations or such other entities that would restrict or adversely influence the ability of other Bidders to plan, build or operate their networks under the Spectrum Licence. Any such agreements shall be reviewable *ab initio* by the FTC pursuant to the provisions of the FCA; and all Bidders and/or parties herein hereby recognize, acknowledge and submit to the jurisdiction of the FTC with respect to such agreements and/or arrangements.

#### ***2.2.5 Auction Design***

The SMA has taken account of the various auction methodologies, namely

- Multiple Round Ascending Bids
- Sealed Bids
- Hybrid (combination of the foregoing)

The SMA still proposes to use a **sealed bid single round process**. Bidders will be required to submit only one bid in a sealed envelope to be opened on the date stated in the RFB.

- All bids will be opened and verified by the SMA’s Internal Auditor and the Bidder’s representative.
- Bidders will be provided with confirmation of their final submission. There will be no opportunity to submit an increased bid offer other than to resolve a tie.
- If there are two or more equal bids, a subsequent sealed bid single round will take place between the tied bids.
- If there are less than two (2) Bidders, the SMA reserves the right to abort the process.
- All Bidders will be required to provide a **Bank Guarantee or bond** in the amount of **50% of the proposed bid on submission of their bid**. The Bank Guarantee or bond to be valid for sixty (60) days.
- Successful Bidders will be given the opportunity to select from the spectrum packages in order of preference based on their final bid values in relation to the

reserve prices. The Successful Bidder with the highest bid will be given first choice.

- Successful Bidders will be required to submit the information outlined in paragraph 2.3 below within seven (7) working days of the auction to facilitate the post-qualification process.

**It is important to note that the SMA reserves the rights to make necessary and reasonable adjustments to the process in the overall interest of achieving a fair and transparent outcome.**

### ***2.2.6 Reserve Price***

In establishing a reserve price, the GoJ considered the following issues:

1. The radio frequency spectrum is a scarce resource.
2. The 700MHz spectrum is a valuable commodity.
3. The price should be low enough in order to encourage multiple players in the market.
4. The price should be sufficiently high in order to ensure a “reasonable” payment for the licence.

Based on the above considerations and the packaging of the spectrum indicated earlier the GoJ has determined reserve prices as follows:

Band 17: **Reserve Price** = US\$45.0M for a fifteen (15) year licence.

Band 13: **Reserve Price** = US\$40.0M for a fifteen (15) year licence.

### ***2.2.7 Return and Use of Bank Guarantee***

Bank Guarantees from Successful Bidders will be returned after the 50% deposit of the auction amount has been paid to the SMA. If a Successful Bidder does not pay on time, as outlined in the timetable at paragraph 3.0, the SMA **will** exercise the bidder's Bank Guarantee. Bank Guarantees from Unsuccessful Bidders will be returned upon announcement of the Successful Bidders.

### ***2.2.8 Administrative Oversight of Process***

The SMA will appoint an Administrator who will have responsibility for the management of the bidding process. The auction will also be overseen by the Office of Contractor General (OCG). The OCG is the agency responsible for, *inter alia*, monitoring the award

and implementation of contracts, licences, permits, concessions and the divestment of government assets.

### ***2.2.9 Unforeseen Events***

If unforeseen events have a major impact on the auction, the SMA may temporarily or entirely interrupt the auction. Under such circumstances, the SMA is entitled to, when appropriate,

- resume the auction at the phase when it was interrupted, *or*
- declare the auction to be invalid and restart the auction from the beginning or from a specific point.

Should an unforeseen event occur, the SMA intends to resume the auction with as little disruption or as few delays as possible. Examples of events viewed by the SMA as unforeseen include but are not limited to natural or other disasters that affect the SMA or the Bidders. The list of unforeseen events is not exhaustive and the SMA shall make a sole determination of such events.

### ***2.2.10 Unsold Spectrum***

Any spectrum not awarded on completion of this process may be awarded at a future date in a manner to be determined by the Minister in consultation with the SMA.

## **2.3 Stage 3 – Post-Qualification**

All Successful Bidders will be required to meet the post-qualification criteria outlined below at paragraph 2.3.1 in order to be awarded a 700 MHz spectrum licence. Successful Bidders shall also:-

1. Satisfy the requirements of the Act, and must hold or be eligible to become the holder of a Carrier or a Service Provider Licence as detailed under Part III of the Act, and
2. Be independent of each other as per section 11(6) of the Act. Therefore, Successful Bidders must declare any direct or indirect cross-ownership in any other entity applying for a Spectrum Licence in this award process.

The SMA may reject an application from a Successful Bidder for, among other reasons, the following:

- if the application is incomplete, or
- if the application contains incorrect information.

The SMA reserves the right to request additional information and/or clarification based on a Successful Bidders submission. Successful Bidders are required to comply with all such reasonable requests.



Successful Bidders will be informed in writing by the date specified in the RFB if they have been successful in their application to be awarded a 700 MHz spectrum licence by meeting the post-qualification criteria.

### **2.3.1 Application Requirements**

**All Successful Bidders will be required to provide information including but not limited to:**

#### **1. COMPANY DATA**

**Certified Copies of relevant documents of incorporation for relevant jurisdiction, viz:**

- ▶ *For incorporation of Jamaican companies which took effect prior to February 2004:*
  - Certificate of Incorporation
  - Memorandum of Association
  - Articles of Association
  
- ▶ *For incorporation of Jamaican companies which took effect subsequent to February 2004:*
  - Certification of Incorporation
  - Articles of Incorporation
  
- Other particulars of the Successful Bidder, including -
  - (a) address of company's registered office,
  - (b) name of principal applicant (must be a Director of the Company) and contact details including telephone and fax numbers as well as e-mail address(es),
  - (c) name of company's Technical Officer and contact details including telephone and fax numbers as well as e-mail address(es).
  
- A detailed list of the shareholders inclusive of the absolute and percentage value of shareholdings and organizational chart showing the relationship between the shareholders and any connected person.
  
- A detailed list of all current and former Directors of the Company, including dates and positions.
  
- Certified Copy of Certificate of Good Standing from the Companies Office of Jamaica or equivalent in other jurisdiction.
  
- Completed Declaration of Applicant Form witnessed in the presence of a Justice of the Peace or Notary Public.

## 2. LEGAL AND REGULATORY

- Copies of the relevant applications or licences issued pursuant to Part III of the Act pertaining to the provision of wireless broadband and mobile services in Jamaica that is, Domestic Carrier, Domestic Service Provider Licence, Domestic Mobile Service Provider Licence and Domestic Mobile Carrier Licence.
- List of all telecommunications licences, permits or authorizations issued to the company or its associated companies stating clearly the relevant jurisdiction for each and the validity period of the licence or authorization.
- List of all applications pending for telecommunications licences, permits or authorizations made by the company or its connected companies, indicating the respective jurisdiction for each.
- Details of all suits, criminal proceedings, actions or administrative proceedings past or present to which the company or its associated companies have been implicated.

## 3. TECHNICAL DATA

- The spectrum block selected.
- Network/site details, such as radio equipment specifications, which will form a part of the Schedule of the Licence.

## 4. BUSINESS AND FINANCIAL DATA

- A Business Plan, including but not limited to the following information:
  - ▶ the proposed service(s) to be offered,
  - ▶ the projected subscriber base for each service for each year of expected rollout (i.e. five (5) years in the case of a new entrant and four (4) years in the case of an incumbent),
  - ▶ the proposed roll out plan detailing the percentage population coverage after each year of expected rollout (the information provided will be a condition of the Licence to be granted),
  - ▶ sufficient data and information to support the projections made above,
  - ▶ the anticipated capital expenditure and the proposal for financing the project, and
  - ▶ the period from the granting of the Spectrum Licence to the commencement of service(s).
- Successful Bidders **must**:
  - ▶ Provide a certified copy of the last annual independently audited financial statements as well as the most recent unaudited financial statements (an officer of the company must attest to the validity of the unaudited statements). If none is available, the Successful Bidder must submit information stating the reason for its unavailability.

- ▶ Demonstrate that it has the financial resources to construct and operate the network for the first two (2) years of operation under the Licence and must provide information or verification of its creditworthiness, available capital, and source of financing including, if applicable, a qualified lender's statement of commitment to providing a specified sum.
- ▶ Provide information on whether the Successful Bidder, any of its Directors or shareholders or any connected person has ever been bankrupt or been associated with a company that has become bankrupt or insolvent.
- ▶ Provide detailed information indicating whether the Successful Bidder or any connected person of the Successful Bidder is currently engaged in bankruptcy proceedings.
- ▶ Indicate whether the Successful Bidder or any connected person currently holds a licence or authorization to operate a telecommunications network in other countries (details should include list of countries as well as the number of years the Successful Bidder has engaged in operating telecommunications network(s)).

**Note: Three (3) copies** of the proposal must be submitted. One marked "Original" with all the original documentation, and the others marked "Copy".

#### **2.4 Stage 4 – Grant of Licence**

When the post-qualification assessment has been concluded, the SMA shall publish the names of the Successful Licensees for each frequency block and the amounts of the winning bids. An invoice will be sent to the Successful Licensee after completion of the post-qualification assessment. This invoice is to be paid by wire transfer within fifteen (15) days from the date of receipt of invoice.

**It should be noted that the final payment option is still to be determined (i.e. lump sum versus payment plan).**

The SMA shall assign the Spectrum Licence(s) for each frequency block as soon as payment is received.

Successful Licensees shall be expected to adhere to the Terms and Conditions of the Spectrum Licence granted.

The Licensees shall ensure at all times that all the directions of the SMA are adhered to.

### 3.0 PROPOSED TIMETABLE

The following timetable of key events leading up to the issue of the licence(s) is proposed.

<b>Activity</b>	<b>Timeline</b>
Issue of Request for Bid	September 16, 2013
Auction	October 11, 2013
Submission of Applications for Post-Qualification Assessment	October 23, 2013
Announcement of Bidders approved for grant of licence	December 4 , 2013
Issue of licences (upon receipt of 50% deposit)	December 18, 2013

These dates will be confirmed after feedback is received at the public forum scheduled for **September 10, 2013**.

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