

ANNEX I

World Bank Comments on Draft Telecommunication Regulatory Commission law

November 2008 draft

In the revised draft dated November 2008 a number of earlier comments provided by the World Bank were taken into account. This version is substantially improved over the previous version. The revised draft provides the Authority with more tools to address regulatory priorities. The Governance structure of the regulatory Authority is substantially improved and the overlap between regulatory functions and policy making functions previously prominent in the earlier version has been largely addressed in this improved version.

Despite those noteworthy improvements, **there remain a number of areas that require additional attention to strengthen the independence of the Authority**. The draft still allows for a continuing role of the State in regulatory affairs, notably through Executive involvement in selection of the Board. It also allows instances where the Regulator becomes involved in operations of telecommunications networks. In addition, the revised version opting for the creation of the Authority by Cabinet decision weakens its legal foundation. The revised draft fragments the responsibility of spectrum licensing between the Ministry and the regulator. By giving the responsibility to the Ministry to license audio visual services, the draft creates ambiguity as the definition of audiovisual services may be open to interpretation. This can create institutional uncertainty and delay the introduction of converged services.

The detailed comments focus only on the changes made in the November 2008 version of the draft telecommunications bill to the version of August 2008. A number of additional areas of improvement have been highlighted in the recommendation column. Earlier comments on the August draft that have not been reflected in the November draft continue to be relevant and worth additional consideration by the drafting team.

Reference	Earlier version	Revised version	Comments	recommendation
Article 2 Functions of the Ministry	Paragraph 12 includes the following task “To establish and adopt the conditions and criteria for the granting of licenses for telecommunication networks and services and for the use of Radio Frequencies”.	This paragraph was deleted. Establishment of conditions for granting licenses is now included as a core function of the regulatory Authority under article 6 (8).	This is a very positive development that reflects a better division of responsibilities between the Ministry and the regulatory Authority and prevents possible interpretation	

			conflicts under the August version	
Article 4	The commission is established in accordance with the law	A commission is established in accordance with Cabinet Decision	The law already provides important details about the governance structure of the commission and established the Commission. The revised version creates uncertainty over the legal instrument that creates the Authority	Review the article and consider earlier version to give the Authority a firmer legal foundation
Article 6 (8)	The Commission establishes the conditions and criteria for the granting of licenses for telecommunication networks and services and for the use of Radio Frequencies. Those conditions and criteria require Ministerial approval	Mention of Ministerial Approval is deleted.	A good development fostering more independence of the Commission in regulatory function. This deletion also addresses earlier Bank comment related to overlap between regulatory functions and policy making function	
Article 9 Commission's Board of Directors	The Minister nominates the Chairperson and the board of directors' members to the Cabinet to approve their appointment, provided however, the Board shall comprise a representative from the Ministry of Telecommunication and a representative from the Ministry of Finance. Requirement that the Ministry of Telecom	The Chairperson and Board of Director are appointed by the President of the Palestinian Authority upon recommendation of the Cabinet. The Minister prepares a list of potential candidates Requirement deleted	This change protects the commission against too much involvement of Ministry and helps with the independence of the Board. This is a very good	Despite this good development there is still too much involvement of the executive Branch for the nomination of the Board Members. Consider involving other branches of Government to ensure proper checks and balances

	and Ministry of finance should be represented in the Board (with voting rights)		development consistent with the principle of independence of regulator and with the importance of clear separation between policy making and regulatory functions.	
Article 10	Eligibility requirement and conflict of interest requirements to Board Members	Chief officer and Directorate Director have same requirements for eligibility as Board members Also conflict of interest provisions extended to Chief Officer and Directors	Good development incorporating earlier comments from the Bank regarding conflict of interest provisions.	Chief officer position may need to be defined in the law
Article 11	Commission terms and renewal	Commission terms and renewal updated as a result of proposed changes of appointment process		
Article 15	Disqualification of Board members does not include bankruptcy Section 2 Article included possibility for Cabinet to Terminate membership in a discretionary manner	Bankruptcy included Old section (2) deleted	These are good developments reflecting earlier Bank comments. With clearly defined removal criteria for Board members, the regulator is better protected from political interference This creates more certainty and predictability for the regulatory function	
Article 18	Article 18 seems to contemplate only one type of licenses	Revised structure based on a distinction between individual license and class license	A major improvement incorporating Bank suggestions. The new regime is more aligned with emerging best	Include standard definitions of individual license and class license in the Definitions Section of the law

	nder 18 (5)License is given for a one year duration	Article deleted	practices Deletion of requirement for annual license is a good development. Annual licenses don't provide much protection or stability to the investor Yearly renewal of license	Need to include in the law longer license term. While it is clear that the licenses are not granted on annual basis, the law is silent on the duration of the licenses. Article 20 provides that the license agreement specifies license term. In many jurisdictions the law provides the time frame of the license (example 15 years for mobile licenses). This option could be considered as it provides more certainty for operators.
Articles 20-21	Issuance of licenses described very briefly	More details on issuance process, content of license (minimum rights and obligations)	Including additional details in the law provides additional certainty to the licensing process and additional predictability for license holders.	
Article 25 Technical standards and specifications	Content on type approval is provided under old article 45	Same content of old article 45 is now under the licensing chapter	No specific comment on the content of the article	
Article 30 Spectrum Licensing	All spectrum licenses are issued by the Authority including spectrum for audiovisual services	Under article 30 (3) spectrum for audio visual services is now licensed by the Ministry	This proposed change could create interpretation difficulties as services continue to evolve.	Given convergence of content and conduit and looking ahead for possibilities offered by convergence, we invite the drafting committee to consider to bring this function back to the regulator
Article 35	Article deals exclusively with interconnection	Limited elements of infrastructure sharing are included	Good development as infrastructure sharing is an	The new additions are very limited and could benefit from further

			increasingly	development. A new
			important element	article of facility
			of telecom legislation	sharing is recommended.
Article 37 (6)	In case the dominant operators provides an interconnection offer that is not acceptable, the commission issues a new offer	The commission issues an order with new terms	The new addition is more precise giving more tools to the commission to enforce interconnection with dominant players.	
Articles 50 and 51	Previous version does not have provisions on dispute settlement	New articles providing a dispute settlement framework for disputes between commission and licensed operators and between licensed operators.	This is a good addition as previous version referred to Commission dispute settlement powers without providing a general framework for dispute settlement	
Article 65	Previous article 63 allows the Commission to become an operator of public telecom network in case the license holder violates license conditions	Article 65 restricts the possibility of the Commission to operate telecom networks to 2 two cases: <ul style="list-style-type: none"> - Natural disasters and in case of war - Refusal to operate and/or violation of license terms despite notification 	Despite clarifications provided in the revised article, this article continues to raise concerns as it opens wide possibilities for the Commission to become a service provider. In case of refusal of service operator to operate and in case of violation of license terms, adequate sanctions could be involved and the Commission can tender the service provision to another provider respecting the principle of separation between regulation and operation of services	Important to focus the exception on cases of Emergencies/ national disasters and war with clear definition of these exceptional cases.

