



CONFIDENTIAL

28 May 2009

PER EMAIL

Mr. Mandla Mchunu
Manager: Spectrum Management
Independent Communications Authority of South Africa
Block A, Pinmill Farm
164 Katherine Street
Sandton

Dear Mr. Mchunu

ODM RESPONSE TO NOTICE 304 and 305 IN GOVERNMENT GAZETTE 32029 OF 16 MARCH 2009

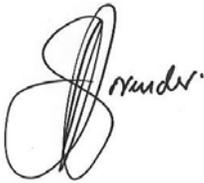
- 1 The Independent Communications Authority of South Africa (the Authority) published the Draft Radio Frequency Spectrum Fee Discussion Paper and Regulations (the draft regulations) as Notices 304 and 305 in *Government Gazette* 32029 of 16 March 2009.
- 2 As a recently licensed broadcasting service, and as an applicant for and individual ECNS licence On Digital Media Pty (Ltd) (ODM) welcomes the publication of the draft regulations as part of the process of providing regulatory certainty regarding the fees payable by licensees. ODM thanks the Authority for the opportunity to comment on the draft regulations.
- 3 As a future ECNS licensee with the sole purpose of self providing our own satellite uplink ODM will limit our comments on the draft regulations to those specific regulations that relate to frequency spectrum licence fees for Satellite Hub Stations. We also make some suggestions of a general nature which we believe can contribute towards the objectives of universal service and access.

- 4 As a general point of clarity ODM understands that the licence fees prescribed in the regulations will be paid by the holders of ECNS licences and not Broadcast Service licensees. ODM assumes that since the spectrum is assigned to the ECNS licensee, the regulations do not make any reference to broadcasting services licensees. ODM requests confirmation from the Authority that Broadcast Service licensees will not be required to pay annual fees for the frequency spectrum licences they are obliged to hold in terms of section 63(3) of the EC Act.
- 5 ODM further assumes that the only fee that broadcast service licensees will have to pay to be issued with a frequency spectrum licence as required by section 63(3), will be an administrative fee payable upon issue of the licence, and a renewal fee payable upon the anniversary of the licence. ODM also assumes that the term of such spectrum licences will coincide with the term of the broadcasting services licences. It is further ODM's understanding that the licence fees payable by broadcast service licensees that are holders of frequency spectrum licences will be prescribed by regulations still to be determined by the Authority in separate regulations.
- 6 A further concern of ODM is that the regulations do not differentiate between an entity that self-provides signal distribution services and those that provide signal distribution services for other broadcasters, generating revenue for this service. The regulations should provide for a different fee (fixed) for self-provisioning and another for those providing signal distribution and other satellite services on a commercial basis.
- 7 ODM recommends that the Authority consider the practicality of aligning the licence term of the frequency spectrum licences with the broadcasting services licences issued by the Authority. This will ensure proper co-ordination between the various licensed issued to any one licensee and facilitate the payment of annual licence fees to the Authority. Regulation 7(4) regarding multi-year licences should therefore be amended to state that the term of the spectrum licence will coincide with that of the broadcast service, or the ECNS licence as applicable.

8 Finally as a general comment regarding the use of licence fees by the Authority to promote the objects of the EC Act, the Authority could consider exempting certain categories of subscribers to a subscription broadcasting service from the payment of fees for VSAT terminals. In pursuit of the objective of Universal Service and Access, the Authority could consider exempting for example rural schools, hospitals and other public entities as well as individual households and designated community organisations¹ in areas that fall outside of the coverage area of the terrestrial networks² from the payment of fees.

ODM thanks the Authority for the opportunity to make these written submissions and looks forward to participating in the hearings that the Authority is planning.

Kind regards



V Govender

CEO

¹ As identified and defined by the Authority following a determination made in terms of section 88(2) of the EC Act.

² The Authority would be able to use the categories of needy persons as determined by the Minister of Communications as provided for in section 88(4) of the EC Act.