

Overview of ICASA Draft Radio Frequency Spectrum Regulations 2010

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ICASA has published notice of its intention to undertake a review of the existing Radio Regulations promulgated under the Telecommunications Act 1996 as well to consolidate various regulations relating to radio frequency spectrum (RFS).

The objective of the exercise is to ensure that the RFS regulations are in line with the Electronic Communications Act of 2005 (“the ECA”) and to incorporate the High Demand Radio Frequency Spectrum Licensing Regulations 2010 and the Frequency Licence Exemption Regulations 2009 into a single document. The new regulations will, once finalised, act as an umbrella set of regulations pertaining to all areas of RFS regulation.

General Principles

1. The regulations will apply to all frequency bands. Where additional rules are to apply to specific bands these will be set out in an Invitation to Apply and/or in the licence document itself.
2. The regulations are general so that ICASA will be able to respond to new developments and implement advanced spectrum management techniques such as spectrum trading, spectrum management rights and collaborative spectrum sharing.
3. Radio regulations are separate from regulations which relate to service licenses (such as ECS and ECNS licences).

Radio Frequency Spectrum Planning

1. The regulations establish a hierarchy of spectrum planning document.
 - 1.1. National Radio Frequency Plan: also known as the South African Table of Frequency Allocations (SATFA), this Plan sets out the broad classes of use to which each frequency band can be put or allocated. The National Radio Frequency Plan is largely decided upon at international level through the World Radiocommunication Conferences hosted every four years by the ITU. All of the plans mentioned below must be consistent with the National Radio Frequency Plan.

- 1.2. Radio Frequency Spectrum Band Plan: this forms a detailed plan in respect of a specific band. This Plan will drill down and specify technical parameters and proposals for the deployment of technologies and must state the purposes for which the band can be used as dictated by Government policy or public demand. It may also:
 - 1.2.1. provide a detailed allocation of the radio frequency spectrum between types of services,
 - 1.2.2. specify or propose detailed frequency channelling arrangements,
 - 1.2.3. specify or propose technical and other requirements, and
 - 1.2.4. may specify or propose principles or assignment and implementation.

- 1.3. Radio Frequency Spectrum Assignment Plan: this plan offers further detail in respect of a specific band (or part of a specific band) and proposes the manner in which frequency in this band will be managed and assigned to licensees. This plan will allow close consultation particularly where there is a need to clear a band and migrate existing users.

The plan will state the “purpose” for which the band may be used as dictated by Government policy or public demand and may detail:

- 1.3.1. the types of services to be provided;
- 1.3.2. specific terms and conditions for the use of the frequency bands;
- 1.3.3. specific qualification criteria to be met by applicants;
- 1.3.4. the area to which the RFS Assignment Plan applies;
- 1.3.5. the procedures and timetable to be followed for assignment and licensing, if applicable;
- 1.3.6. the apportionment of the relevant frequency bands in the Radio Frequency Plan for exclusive or shared assignments; and
- 1.3.7. any other matter as the Authority may deem necessary.

An RFS Assignment Plan must state whether available RFS specified in the plan will be available on a first-come-first-served basis or whether there will be a competitive process.

- 1.4. Invitations to Apply (ITAs): these will be issued subsequent to the finalisation of the Radio Frequency Spectrum Assignment Plan and will set out the final rules regarding the use of the frequency together with instructions on to apply. Note that an ITA will specify the method to be used for assigning the spectrum and this will not necessarily be an auction or competitive process (i.e. it could be first-come-first-served).

Where the ITA relates to RFS to be assigned on a first-come-first-served basis then it must set out:

- 1.4.1. the subject of the ITA;
- 1.4.2. the place for the submission of the application;
- 1.4.3. the application fee,

- 1.4.4.any qualification criteria that are applicable;
- 1.4.5.the terms and conditions relating to the application;
- 1.4.6.the proposed licence terms and conditions; and
- 1.4.7.any other information or requirements as the Authority may deem necessary.

An ITA relating to FRS which will be assigned on a competitive bases (i.e. where there is insufficient supply to meet demand) must in addition set out:

- 1.4.8.the procedures for submission of the application;
 - 1.4.9.the deadline for the submission of the application;
 - 1.4.10. conditions and procedures for the amendment of an application;
 - 1.4.11. conditions and procedures for the submission of supplementary information;
 - 1.4.12. conditions for the disqualification of an applicant from the application process;
 - 1.4.13. the selection process;
 - 1.4.14. the evaluation criteria;
 - 1.4.15. any reserve price that may be set auction rules.
2. All of the plans listed above as well as any ITA will be subject to a public participation process in terms of which a draft is published and written comments are invited. Where ICASA believes it to be necessary they will also hold public hearings.

Licence Exemptions

1. The regulations will incorporate and absorb the existing Frequency Licence Exemption Regulations, as amended. The various bands in which radio equipment can be used without an RFS licence are set out in Annexure A to the regulations.
2. They will also incorporate ICASA's revised position on the 5725 – 5875 MHz band.

Standard Terms and Conditions of RFS Licences

1. The following will be incorporated as standard terms and conditions applicable to all RFS licences:
 - 1.1. Only type approved equipment may be used or operated;
 - 1.2. All RFS licence fees must be paid before the due date;
 - 1.3. All directions received from ICASA with regard to the use of the RFS must be complied with;
 - 1.4. The licensee must take all steps necessary to avoid causing harmful interference and that any equipment causing harmful interference ceases operation until the interference is resolved;
 - 1.5. The specified power output power levels, emission parameters, coverage area and other specific rules of use must be complied with unless written approval has been obtained from ICASA to deviate therefrom;
 - 1.6. The licensee must comply with any technical or mandatory standard or voluntary code registered by ICASA under the Act; and
 - 1.7. The licensee must comply with the Act and any related legislation and all other relevant laws.

Duration and Renewal of RFS licences

1. There are specific provisions dealing with the duration and renewal of licences (although these may be varied in an ITA in respect of a specific band).
2. The grant of a licence should not be considered to give the holder a monopoly on the continued use of the relevant RFS band. In general an RFS licence will remain valid from 1 April to 31 March of the year in which it was issued and then must be renewed through payment of the annual licence fee after which it will be valid until 31 March of the next year.
3. If payment is not received by the due date the licence will be subject to suspension.
4. Licences may be renewed in this manner for a maximum of 5 years except where:
 - 4.1. the licence relates to a pre-assigned service (amateur, aeronautical, maritime, citizen band or ski-boats) in which case the maximum period is 15 years; or
 - 4.2. the licence is linked to a broadcasting services licence in which case the periods of the licences must run concurrently.
5. Where a licensee has been granted a multi-year licence the renewal must be affected at the end of the multi-year period unless the maximum period for renewal has been reached.
6. Where a licence is approaching the maximum period the licensee may, not less than 60 days before the expiry of the maximum period, make a new application for an RFS licence.
7. These rules are designed to:
 - 7.1. Dovetail with the Spectrum Licence Fee Regulations 2010.
 - 7.2. Reflect the technology development cycle by requiring a new application to be made after 5 years as a general rule while allowing a longer period of 15 years for the majority of smaller licensees using frequency for pre-assigned services.
8. Although licensees will have to renew their licences annually they would expect to have the renewal application approved unless they are being migrated due to the finalisation of a new spectrum planning process.

Licence fees

1. Unless RFS licence fees are paid and up to date licensees will not be allowed to make applications for new frequency or for the amendment, renewal or transfer of licences.
2. Annual licence fees are set out in the Radio Frequency Spectrum Licence Fee Regulations while application and other fees are set out as annexures to these regulations.

Withdrawal / Suspension / Cancellation of RFS licences

1. RFS licences may be suspended or cancelled where:
 - 1.1. A condition or technical restriction in the licence is breached;
 - 1.2. Licence fees are not paid;
 - 1.3. Where the RFS licensee cannot provide a service licence where they are providing a service requiring a service licence;
 - 1.4. Where there is a contravention of the ECA or applicable regulation;
 - 1.5. If the frequency assigned has not been used within 2 years of assignment; or
 - 1.6. Where the suspension or cancellation would be in the public interest.

2. Where ICASA intends to suspend or cancel a licence it must notify the licensee in writing and the licensee then has 30 days to make representations as to why the licence should not be suspended or cancelled. ICASA may elect to hold public hearings.
3. If the suspension or cancellation will affect members of the public then they must also be given a chance to make representations.
4. If ICASA confirms the suspension or cancellation then a notice to this effect must be published in the Government Gazette and the suspension or cancellation will take effect 14 days after this notice is served on the licensee. The licensee must cease all use of the frequency affected within 30 days from the date the suspension or cancellation take effect.
5. The regulations also set out a specific procedure to be followed for the surrender of RFS licences.

Transfers and sub-assignment of licences

1. The regulations contain provisions which allow the transfer of licences or the sub-assignment of the right to use frequency. This is a major step forward for frequency management in South Africa.
2. ICASA's approval must be obtained before a licence can be transferred or leased.
3. Transfers and lease of licences cannot be done for a profit. ICASA is of the view that allowing trading for profit at this stage would not be compatible with the aim of making spectrum available to all groups for the benefit of general society.
4. Transfers:
 - 4.1. Before a licence can be transferred it must have been held for a minimum of 1 year and all applicable licence fees must have been paid.
 - 4.2. If the frequency was obtained through a competitive process then the amount paid by the party acquiring the licence cannot be greater than the auction price paid adjusted on a pro-rata basis to the remaining duration of the licence.
 - 4.3. There is a specific procedure set out in regulation 20 and a transfer application fee will be prescribed.
5. Leases / sub-assignments
 - 5.1. The lessee must undertake to comply with the terms and conditions of the licence as if they were the licensee and such other terms as ICASA may impose.
 - 5.2. The lessor / licensee must notify the lessee of any matters affecting the assignment within 14 days after receiving notification from ICASA or another relevant body.
 - 5.3. The lessor / licensee remains responsible for the conduct of the lessee and for the prevention of harmful interference and compliance of the lessee with the radio regulations and terms and conditions of the relevant licence.
 - 5.4. Payments made by the lessee for the lease of frequency cannot exceed the spectrum licence fee or auction price paid by the original holder of the licence, adjusted on a pro-rate basis with reference to the remaining term of the licence and the amount of frequency leased.

Procedures for Radio Frequency Spectrum Licensing and Assignment

1. The regulations propose a standard procedure and extended procedure for applying for RFS.
2. The standard application procedure:
 - 2.1. This is meant to be as simple as possible and information required is limited to the identity of the applicant/ registrant and where he/she will be locating transmitters.
 - 2.2. The standard procedures are intended to apply to the maximum number of categories with the qualification that the Authority can demand that applicant/ registrant submits an extended procedure or provide further information if required.
 - 2.3. Annexure C sets out the details of the information required, including:
 - 2.3.1. Site GPS co-ordinates;
 - 2.3.2. RF bandwidth;
 - 2.3.3. Modulation scheme;
 - 2.3.4. Bit rates;
 - 2.3.5. Antenna site, type, diameter, gain and polarisation;
 - 2.3.6. Transmit power;
 - 2.3.7. Receiver sensitivity threshold;
 - 2.3.8. Type and geographical area of service; and
 - 2.3.9. Type approval certificates and equipment specifications.
 - 2.4. Diagrams and sketches of the network must also be supplied.
 - 2.5. Importantly the standard procedure will apply to licence exempt frequency, i.e. users of licence exempt frequency will be required to notify ICASA of their identity and where they intend to locate their transmitters.
3. The extended application procedure:
 - 3.1. The purpose of the extended procedures is to cover the small number of situations where there is no radio frequency spectrum band plan or ITA, but an application for spectrum has been made which needs to be thoroughly evaluated in terms of the background and capabilities of the applicant. It may, however, be applied at ICASA's discretion.
 - 3.2. The information to be supplied to ICASA is set out in Annexure D to the regulations and includes the information required for the standard procedure as also business plans and amplified technical information.
4. The procedures for applications for frequency in classified as being in high demand will be contained in a specific ITA. These will include the rules that were contained in the repealed High Demand regulations.

Sharing and Co-ordination of Radio Frequency Spectrum Assignments

1. The regulations are intended to ensure that sharing of the same assignment by two or more licensees can be maximised and to allow the Authority to introduce innovative technologies and spectrum management approaches.
2. The regulations allow the Authority to impose sharing and to demand that the licensees who are sharing an assignment to sort out their internal coordination. ICASA may also require a number of

licensees sharing the same band to collectively submit a spectrum sharing co-ordination agreement.

3. The regulations also set out procedures for resolving disputes arising from sharing. This is to be done on an expedited basis by the Complaints and Compliance Committee (CCC).

Withdrawal of the Right to Spectrum

1. These regulations enforce the right of the Authority to take spectrum away from existing users in order to allow it to be used for another purpose of greater benefit to society as a whole.
2. These regulations will only be invoked in exceptional circumstances as a last resort and will be subject to consultation. Existing users of the frequency to be so acquired will, where possible, be assigned frequencies in other bands.

Radio Regulations for Specific Services

1. These are the revised and updated radio regulations for specific services. These services are specified because they are well established, generally stable and applicable to a large number of licensees.
 2. The regulations for Electronic Communication Equipment Dealers replace those for radio dealers and are contained in these regulations because the equipment in question is generally radio equipment.
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