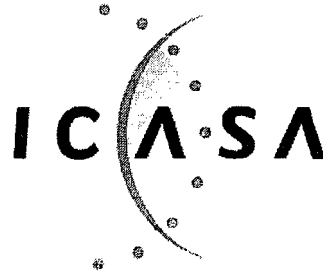


NOTICE 926 OF 2010

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



DRAFT RADIO FREQUENCY SPECTRUM REGULATIONS

EXPLANATORY DOCUMENT

REASONS DOCUMENT

1 Introduction

The objects of these Radio Frequency Spectrum Regulations are as follows:

- (1) To establish Radio Frequency Spectrum Regulations that are compliant with the Electronic Communications Act, 2005 (Act No. 36 of 2005) and cover as wide a range of issues as possible under a single legislative instrument.
- (2) To repeal and substitute a range of regulations promulgated under previous legislative or statutory frameworks including the now repealed Telecommunications Act, 1996 (Act No. 103 of 1996).
- (3) To incorporate the High Demand Regulations and Licence Exempt Regulations into a single body of regulations.
- (4) To act as an umbrella set of Radio Frequency Spectrum regulations that is in principle applicable to all areas of the radio frequency spectrum and to all types of licensed services.

2 Part 1 - General Principles

- (1) These regulations as a general rule are applicable to all frequency bands. Regulations for certain services that were covered in the radio regulations have been included as these are relatively stable and affect a large number of small individual licensees.
- (2) Additional rules that are applicable to specific services or frequency bands will be covered in specific regulations contained within Invitations to Apply, or individual licences.
- (3) These regulations are drafted in such a way as not to hamstrung future developments in spectrum management such as spectrum trading, spectrum management rights, collaborative spectrum sharing etc.
- (4) These regulations accordingly allow the Authority considerable freedom or leeway to promote advanced uses of the spectrum in future regulations including Invitations to Apply.
- (5) While there is no requirement that the regulations for Radio Frequency Spectrum Licences be according to the same format as the Service Licences, the same grouping of topics is adopted as far as possible.
- (6) The term 'licences' in these regulations applies only to radio frequency spectrum licences and assignments. These regulations do not address the 'service licences' (BS, ECNS and ECS licences) which are covered in separate regulations. The radio frequency spectrum regulations are intended to be independent from changes in the service licensing regime.

3 Part II – Radio Frequency Spectrum Planning

- (1) These regulations empower the Authority to develop plans for the use of specific frequency bands services. Part II sets out the process by which a radio frequency spectrum band can be identified as being required for a specific purpose, the applicable technical parameters defined and the method of assignment determined along with the consultation process.
- (2) The guiding document is always the **National Radio Frequency Plan** which is typically updated every four years after a ITU-World Radio Conference.
- (3) The next step on the process is a **Radio Frequency Spectrum Band Plan**, which looks at a specific frequency band (or possibly service) in the Radio Frequency Plan and offers more detail regarding technical parameters and specific proposals as to which technologies should be deployed. It is the intention of the Authority to ensure that these Radio Frequency Spectrum Band plans will be subject to public consultation.
- (4) It is further envisaged that the Authority may develop a **Radio Frequency Spectrum Assignment Plan** which reflects the Radio Frequency Spectrum Band plan and provides more detail as to which service(s) could be offered and makes proposals as to how the frequency may be assigned. The Radio Frequency Spectrum Assignment Plan aims to depart from the fragmented approach which has characterised spectrum usage in the past. The assignment plan may well propose that the frequency will have to be cleared and reassigned with proposals regarding the movement or migration of existing users into other frequency bands. The consultation on the band plan may have already indicated that demand is going to exceed supply and propose a competitive process. These assignment plans (sometimes termed marketing plans) have a key role as consultation documents.
- (5) Following on from the assignment plan consultation, the Authority will issue an **Invitation to Apply** (ITA) which prescribes the final set of rules regarding the use of the frequency with instructions on how to apply. The ITA is not necessarily for a competitive process such as an Auction, but when it is, it must set out the rules for the competitive process.
- (6) This whole process will take some time and considerable consultation as it may eventually involve taking the particular frequency band from existing users. Users do not have any right of tenure of a frequency, however to cater for all possibilities, supporting regulations on Withdrawal of the Right of Use have been drafted.
- (7) The instrument for assigning the specific frequencies is the ITA. The ITA can specify either a first come first served mechanism or a competition such as an auction. In this way the high demand regulations are absorbed into these regulations.

4 PART III – Radio Frequency Spectrum Licence Exemptions

- (1) The existing licence exemption regulations have been incorporated and attached in the Annexure A, and there is one change in the 5725 – 5875 MHz band (See Table of frequency spectrum licence exemptions).

5 Part IV - Standard Terms and Conditions of Radio Frequency Spectrum Licences

- (1) The standard terms and conditions are intended to cover any spectrum licences.
- (2) The regulations on duration and renewal are an extension of the previous radio regulations and intended to meet the following objectives:
 - i. Be consistent with the Spectrum Pricing Regulations, including the provisions for multi-year licenses.
 - ii. Reflect the technological cycle by requiring a new application to be made after 5 years as a general rule.
 - iii. Reduce the burden on users and administration by allowing renewal up to 10 years for those pre-assigned services which include the majority of smaller licences.
 - iv. Where required, an ITA or a licence may indicate a specific maximum period for renewal.
- (3) It must be stressed that in most cases, a 'fresh' application for the frequency will be approved and any exceptions to this will be the result of a spectrum planning process as mentioned above.
- (4) The regulations on transfer and leasing / third party authorisations make it possible for the Authority to introduce flexible spectrum management methods in the future through an ITA's for specific bands. However, it will not be possible for a licensee to transfer or lease spectrum for a profit. Introducing the possibility of trading for profit is not, at this stage, regarded as compatible with the aim of making spectrum available to all groups for the benefit of society as a whole.

6 PART V – Procedures for Radio Frequency Spectrum Licensing and Assignment

- (1) The Standard procedures are meant to be as simple as possible, they are limited to the identity of the applicant/ registrant and where he/she will be locating transmitters. 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 if required.
- (2) 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.
- (3) The procedures for applications for frequency in High Demand will be contained in a specific ITA, including the rules that were contained in the repealed High Demand regulations.
- (4) Generally speaking, the application procedures have not changed significantly from the existing practice.

7 PART VI – Sharing and Co-ordination of Radio Frequency Spectrum Assignments.

- (1) The regulations are intended to ensure that sharing 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. This is also an essential component of ensuring the most efficient use is made of spectrum resources.

8 PART VII – 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.

9 PART VIII– 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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