

**TELKOM'S SUBMISSION ON THE DRAFT RADIO FREQUENCY
SPECTRUM REGULATIONS AS PUBLISHED 29 SEPTEMBER 2010
IN GOVERNMENT GAZETTE No. 33590 (NOTICE 925 OF 2010)**

1. INTRODUCTION

Telkom SA Limited (“**Telkom**”) welcomes the opportunity to provide comments on the draft Radio Frequency Spectrum Regulations (“**draft Regulations**”) as published 29 September 2010 in Government Gazette No. 33590 (Notice 925 of 2010).

Telkom requests an opportunity to make an oral presentation, which presentation shall not exceed one hour, at the public hearings scheduled for 1 to 2 December 2010.

An executive summary of Telkom’s submission is contained in section 2 below followed by detailed comments in section 3. The comments in section 3 are presented according to the structure and titles of the draft Regulations. Those sections where Telkom has no comments have been excluded. For ease of reference, all paragraphs have been numbered sequentially.

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3. EXECUTIVE SUMMARY

- (1) In Telkom's view these draft Regulations are well thought-out and drafted and provide an excellent platform for taking spectrum management forward. It provides a good framework for addressing many important spectrum issues holistically, including many uncertainties, which prevailed. Although more can be done to allow the spectrum market to function more freely in order to further enhance the efficient and effective use of spectrum, these recommendations are steps in the proper direction.
- (2) Telkom trusts that the inputs provided will further enhance and improve the Radio Frequency Spectrum Regulations 2010.
- (3) Apart from general observations and/or suggestions for further improvement, the following main concerns are addressed in this submission:
 - a. Potential overlap or conflict between the provisions of section 34 of the ECA and section 5 of the draft Regulations pertaining the development of the national radio frequency plan and the radio frequency spectrum plans (see sections (12) to (17) below);
 - b. The duration of radio frequency spectrum licenses, but more specifically the process and cost involved in renewing spectrum licences, especially where large number of assignments could be involved (see sections (26) and (29) below);
 - c. Not allowing the market to determine the appropriate spectrum fee where spectrum licenses are transferred or leased to third parties (see sections (32) and (34) to (38) below);

- d. The scenario where large volumes of information is repeatedly being provided to the Authority with each application under the standard application process (e.g. point-to-point links and VSAT terminals) should be avoided (see sections (39) to (42) below);
- e. Not addressing the issue of compensation in cases where one licensee must vacate spectrum in order to allow another licensee to utilise the same spectrum should be addressed (see section (54) below);
- f. The proposed regulation of virtually all electronic equipment dealers (see sections (55) to (59) below).

4. General comments on structure of the draft Regulations

- (4) Because of the amount of information and different issues being addressed in the draft Regulations, Telkom recommends that the Authority adds a ToC (Table of Contents) to the document.
- (5) The proposed draft Regulations is titled “*Radio Frequency Spectrum Regulations*”, which is a very broad concept potentially including many issues. The intention of the Authority regarding the ultimate goal of the “*Radio Frequency Spectrum Regulations*” is however not clear at this stage because the proposed draft Regulations are a mixture of existing regulations (e.g. SRDs, amateur services, etc.) as well as new regulations (e.g. spectrum planning, licensing, etc.). Is the intention therefore to include all spectrum management related regulations in one consolidated document (similar to the current Radio Regulations)¹? Will all assignment plans, radio frequency band plans, coordination procedures, etc., to be developed under these Regulations, also be included as part of the Radio Frequency Spectrum Regulations or, will these be prescribed as separate publications? Other spectrum regulations have also been prescribed although these have not been included in the draft Regulations (see Telkom’s comments in section 13.2 Having all spectrum regulations published as one consolidated document has many advantages and could be supported.
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¹ Government Notice R.2862 dated 28 December 1979, as amended

- (6) In considering the above, Telkom recommends that the Authority also considers the practicalities pertaining to future modifications of the Radio Frequency Spectrum Regulations. These include, amongst others, updating the current proposed content, addition of new information (including new parts and/or sections), re-publication, etc.

5. PART I – Preliminary

5.1 Definitions (section 1 of the draft Regulations)

- (7) The definitions as contained in section 1 of the draft Regulations contain broadly two categories of definitions namely, (1) those of general application and (2) those specific to issues addressed in the draft Regulations (for example “amateur services”). Furthermore, some sections in the draft Regulations also contain their own definitions section, for example Annexure A that contains those definitions related to the spectrum licence exempt regulation.
- (8) Telkom recommends that issue-specific definitions be added to the relevant section dealing with the particular issue. This will improve reading and use of the document. It will also facilitate updating of the regulations in that self-contained sections could be updated without the need to update the entire document.
- (9) It is also noted that some definitions are not used in the draft Regulations (e.g. aeronautical station and aircraft station) and it is recommended that these be deleted.
- (10) Some terms have been defined more than once and these definitions are not the same. For example, “*base station*” has been defined in

section 1 and in Annexure A). Furthermore, the term “*base station*” has also been defined in the ITU Radio Regulations², which definition has been adopted into SATFA. Whereas it is acceptable that these terms could have different meanings in different contexts, care should be taken so as not to create confusion. Where possible the ITU definitions, which have also been adopted in SATFA, should be used. Different definitions should only be given where required.

- (11) Since “*assignment*” has been defined, and considering the importance of the term, Telkom recommends that the Authority also add a definition for “*allocation*”. These terms have been defined in the ITU Radio Regulations (Article 1).

² Article 1, ITU Radio Regulations, edition 2008

6. PART II – Radio Frequency Spectrum Planning

- (12) Part II addresses radio frequency spectrum planning as three distinct levels or steps namely, the development of (1) a National Radio Frequency Plan, (2) Radio Frequency Spectrum Band Plans and (3) Radio Frequency Spectrum Assignment Plans. This may then be followed by an ITA, spectrum assignment or licensing process. The logic behind these sequential steps is correct and is supported.
- (13) The national radio frequency plan (or SATFA³) is the basis of spectrum planning and is addressed extensively in section 34 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“**ECA**”), which provisions include, amongst others, the preparation and updating of the national radio frequency plan. Section 34 of the ECA addresses many issues which are seemingly also addressed in section 4 of the draft Regulations. Telkom is of the view that ambiguity may be created between steps one and two namely, the development of the “*National Radio Frequency Plan*” and “*Radio Frequency Spectrum Band Plans*” respectively, in the sense that there is a fine line between these two activities. This is also aggravated by the fact that these two activities have very similar headings. Similarities are, for example (own emphasis):
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³ South African Table of Frequency Allocations, Government Gazette No. 33409 dated 30 July 2010 (Notice 727 of 2010)

- a. Section 4(3) of the draft Regulations: Radio Frequency Spectrum Band Plans must specify the purpose for which bands are used – section 34 of the ECA has the same objective;
 - b. Section 4(4) of the draft Regulations: Specify the detailed allocation of the radio frequency spectrum between type of services – section 34 deals in particular with the allocation of frequency bands to services;
 - c. Section 4(4) of the draft Regulations: Specify channelling arrangements – SATFA already contains radio frequency channelling arrangements;
 - d. Etc.
- (14) It is therefore easy to see why the radio frequency spectrum band plan activities could be seen as encroaching into the activities of section 34 of the ECA.
- (15) It is however clear, from section 4(2) of the draft Regulations, that the “Radio Frequency Spectrum Band Plans” fall under SATFA, in other words, the intent is that it contains further details and elaborates on the allocations contained in SATFA. Again, Telkom supports the need for these two separate activities; whereas SATFA must be stable in order to create confidence in the market and deals with spectrum allocations, there could be a need to provide further details on the use of particular frequency bands (for example, the 2.6 GHz band, within the context of the mobile allocation, additional detail such as radio frequency channel arrangements, sharing criteria, coordination methodologies, band planning, etc. should be developed). This additional information could require more regular updating for the different frequency bands without
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the need to change the spectrum allocations. This flexibility is introduced through steps one and two as contained in sections 4 and 5 of the draft Regulations.

- (16) Why then the concern? According to section 34 of the ECA, the National Radio Frequency Plan must be developed by the Authority according to the stipulated provisions and, importantly, must be approved by the Minister. On the other hand, according to section 4(1) of the draft Regulations, ICASA will develop the “Radio Frequency Spectrum Band Plans” as regulations under section 4(2)(b) of the ECA, which do not require Ministerial approval. Therefore, if the activities envisaged under section 4 of the draft Regulations do not encroach on those as stipulated in section 34 of the ECA, these should be acceptable. If however any activity performed under section 4 of the draft Regulations do encroach on those activities as stipulated in section 34 of the ECA, such activities would be *ultra vires*.
- (17) As a possible remedy Telkom recommends that section 4 of the draft Regulations be combined with section 5 (Radio Frequency Spectrum Assignment Plans). Radio frequency spectrum assignment clearly falls within the ambit of the Authority. Also, the current section 4 should be carefully re-drafted to ensure that there is no potential overlap between the provisions of section 34 of the ECA and the role of the Minister *vis-à-vis* that of section 4 of the draft Regulations and the role of the Authority. Alternatively, section 4 of the draft Regulations should be re-titled, and re-drafted as indicated above, to ensure that these activities are distinct from each other. Telkom does however support the intent behind the draft Regulations as contained in Part II.
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6.1 National Radio Frequency Plan (section 3 of the draft Regulations)

(18) Regarding section 3(2), Telkom recommends that the reference to “*allocations*” be deleted. Telkom agrees that all assignments must be consistent with the national radio frequency plan, as also stipulated in section 34(3) of the ECA. However, by stating that all allocations should be consistent with the same allocations (as contained in the national frequency plan) could be perplexing. Alternatively, the word “*allocations*” could be replaced with “*planning*”, in order to capture those activities envisaged under sections 4 and 5 of the draft Regulations.

6.2 Radio Frequency Spectrum Assignment Plans (section 5 of the draft Regulations)

(19) Public consultation should also take place regarding the amendment of Radio Frequency Assignment Plans (section 5(6) of the draft Regulations). Telkom therefore recommends that the following phrase be added at the end of the section: “*...as it deems fit and appropriate, taking into account section (3) above.*”

6.3 Invitation to Apply (section 6 of the draft Regulations)

(20) Telkom submits that an Invitation to Apply (ITA) should be prescribed in terms of section 4 of the ECA and therefore a public consultation process must be followed as per the provisions of section 4 of the ECA. This will provide the public with an opportunity to comment on the contents of an ITA, which could include issues such as spectrum

reserve prices, proposed licence terms and conditions, possible rollout obligations, bandwidth caps, etc.

7. PART III – Radio Frequency Spectrum Licence Exemptions

7.1 Radio Frequency Spectrum Licence Exemption (section 7 of the draft Regulations)

- (21) Telkom notes that section 7(1) of the draft Regulations erroneously refers to section 30(6) of the ECA instead of section 31(6).
- (22) Telkom recommends adding the following words to section 7(2): “...*shall comply with the relevant technical and operational rules that are...*”. This addition is to highlight the fact that both technical and operational rules should be complied with.

8. PART IV – Standard terms and conditions for Radio Frequency Spectrum Licences

8.1 Standard conditions for a radio Frequency Spectrum Licence and assignment (section 8 of draft Regulations)

- (23) Telkom recommends that the term “*radio apparatus*” be used throughout this section (instead of “*apparatus*”) in order to align with the definition as provided in the ECA.
- (24) According to section 36(1) of the ECA, the Authority may prescribe standards (own emphasis) and Telkom therefore recommends that the Authority uses the word “*prescribe*” instead of “*registered*” in section 8(7) of the draft Regulations. Furthermore, the reference to “*voluntary code*” is not clear specifically also since the licensee “*shall comply*” with such voluntary code.
- (25) Telkom is concerned regarding the broadness of section 8(3) of the draft Regulations where it requires compliance with all directions from the Authority in relation to the use of the radio frequency spectrum. Telkom therefore recommends the addition of the following words at the end of section 8(3): “...in relation to the use of the spectrum, to ensure compliance with the provision of Chapter 5 of the ECA,”. This will also ensure alignment with the provisions of section 31(7) of the ECA.

8.2 Duration of a Radio Frequency Spectrum Licence and Renewal (section 9 of draft Regulations)

- (26) Although Telkom could agree to the principle of spectrum renewal after a number of years as a measure of ensuring that the spectrum is used efficiently and effectively, as addressed in section 9(2) of the draft Regulations, it is important to consider the following concerns in this regard:
- a. Telkom could agree with section 9(2) since it provides for a spectrum licence to be assigned also for periods greater than 5 years. This is very important, in particular for those frequency bands where national commercial access networks are deployed, which are generally planned with a Return on Investment (ROI) of more than 5 years. Licensees need certainty that their spectrum licences will be renewable and that their investments will therefore be protected prior to committing to invest in such capital-intensive projects.
 - b. The statement "...will remain valid from 1 April until 31 March of the year in which it was issued..." is not clear in the sense that most spectrum licences will probably be issued on a different date (not 1 April) and it is therefore not clear how these other dates will be addressed. Will the licence be issued pro-rata from the date of issue until 31 March and thereafter renewed annually on 31 March (also for purposes of calculating spectrum fees)? How will this impact on the 5 year maximum period (or any other period specified) considering that a licensee must re-apply for renewal not later than 60 days before the end of the maximum period (i.e. will the date of 31 March be used when determining the actual

application date)? Or, will all licences retain the actual assignment date as the anniversary date, which is then used for purposes of spectrum fee calculations and the date for renewal? The wording used in section 9(3) is more appropriate and could also be adopted for section 9(2). Telkom recommends that this provision be reworded to address these issues.

- c. Based on current experience it is doubtful that the Authority will be in a position to process thousands of re-applications, in particular if many expire on 31 March each year. What will happen with the thousands of networks and systems providing services when these are not renewed in time? A possible solution is to add a provision stating that a spectrum licence is deemed to be renewed if no response is received from the Authority after 60 days.
 - d. There is no process for spectrum licence renewals specified in the draft Regulations; on the contrary, it would seem that the intention is that a new application must be lodged with the Authority (“...make a new application to the Authority...” (own emphasis to section 9(7) of the draft Regulations). It is assumed that these “new” applications should be made in terms of PART V of the draft Regulations, as applicable. Telkom therefore recommends that a simpler and streamlined process be adopted for spectrum licence renewals in order to deal with the bulk of renewals. The discretion could still remain with the Authority to request, in particular cases, the application of the extended application process. This will remove a substantial administrative burden from both the Authority and licensees.
 - e. According to Annexure B (section 2), a licensee may apply for new links to be assigned as an amendment to its licence using the
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standard application process. It is not clear how these spectrum licences will have to be renewed considering that additional links have been added over time to the licence.

- (27) According to section 9(4) of the draft Regulations, a spectrum licence, for the purpose of broadcast, must run concurrently with the period of the broadcast service licence. It is not clear why this concession is made to broadcasting services, in particular with reference to commercial broadcasting networks.
- (28) With reference to section 9(7), Telkom recommends the addition of the following phrase at the end of the section: “...*make a new application to the Authority for a Radio Frequency Spectrum Licence, which request will not be unreasonably rejected*...”. This is important to ensure that those networks which are providing services may continue to operate until such time when the service is no longer required. Therefore, there must be certainty that the spectrum licence request for renewal will not be unreasonably refused after the stipulated period. Also see Telkom’s comments above regarding the adoption of a procedure for spectrum licence renewals.

8.3 Radio Frequency Spectrum Licence Fees (section 10 of draft Regulations)

- (29) Whereas Telkom supports the principle of a spectrum application fee, the fee must be proportionate to the Authority’s administrative activity in processing the particular application. Without knowledge of the internal administrative structures and operations of the Authority it is not
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possible for Telkom to comment on the actual spectrum application fees and it is also not our intention to do so at this stage. However, Telkom would like to raise the following issues regarding the proposed spectrum application fees:

- a. Although practice has shown that broadcasting applications consume a considerable amount of the Authority's resources, applications for broadcasting spectrum licences have been excluded from Annexure E of the draft Regulations. Telkom recommends that applications for broadcasting services frequencies be added to Annexure E and a fee proportionate to the administrative burden be applied.
 - b. One category where the spectrum application fee seems exceptionally high is that of VSAT (if applied to each terminal), especially considering that its application fee is the same as that of a fixed satellite earth station (uplink), an SNG or even very similar to the application fee for a wide area network or an entire paging system. Telkom therefore recommends that the application fees for VSAT be reduced so that it does not impact on the development of the VSAT market. Already the spectrum fees for VSATs will severely impact on the VSAT market. However, if the proposed application fee is intended for the application of a VSAT network (i.e. consisting of many VSAT terminals), the proposed fee could be acceptable. In this case, adding additional VSAT terminals to an existing licence should be addressed (see also next section regarding the use of the standard application procedure for VSATs).
 - c. Another concern for Telkom is the application fees that will apply when renewing radio frequency spectrum licences, in particular for
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PTP links and VSATs if applied on a link-by-link or per VSAT terminal basis, respectively. If all renewals are considered to be new applications, and if the stipulated application fees apply, this will put a substantial financial burden on bulk users of spectrum. For example, in Telkom's case, the application fees pertaining to renewal of fixed links and VSATs, if each individual link and VSAT must be renewed separately, will result in more than R28 million for application fees over five years. Telkom recommends that application fees for renewal of spectrum licences be voided in those cases where a spectrum licence is successfully renewed. Alternatively, a new spectrum fee category must be introduced, in particular for sections 5 (Fixed Services) and 7 (Satellite Service), with a substantially reduced application fee so as not to place an undue burden on licensees. Not considering the financial impact to licensees, a voided or reduced tariff could be justified, considering that a renewal of spectrum licence requires virtually no administrative work since the particular system or link is already in operation.

8.4 Withdrawal (Suspension or cancellation) of a Radio Frequency Spectrum Licence (section 11 of draft Regulations)

- (30) Telkom recommends that the Authority adds a cross reference to section 18, which deals with the procedure for withdrawal of a radio frequency spectrum licence.
- (31) Telkom is concerned about the inclusion of section 11(g), which provides for the Authority to withdraw a spectrum licence in the "*public*
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interest". This provision is very broad since it is not clearly prescribed what amounts to public interest.

8.5 Transfer of a Radio Frequency Spectrum Licence (section 12 of draft Regulation)

- (32) Telkom welcomes the opportunity created by the Authority for allowing the transfer of radio frequency spectrum licences. This is a move in the proper direction, namely shifting towards the adoption of internationally accepted best-practice of market-based spectrum management principles. However, Telkom would recommend that the Authority delete (or amend) section 12(3) in order to allow the market to determine the spectrum price to apply when transferring a radio frequency spectrum licence. Where a licensee wishes to acquire spectrum from another licensee, the licensee should be allowed to pay a market-based fee according to the opportunity costs of the spectrum at that time and based on the licensee's own business case for the specific frequency band. This is important since the market value of spectrum may have changed since the first acquisition by the transferor, due to, for example, new technology developments in the particular frequency band, which could create new business opportunities. Also, by allowing the market to determine the spectrum price, spectrum efficiency will be increased because the transferee, who values the spectrum more, will pay more for the spectrum and it is therefore assumed that he will also make more effective use of the spectrum. Furthermore, by allowing the transferor to charge more for the spectrum, it may create the required incentive for the transaction to

proceed, which will ultimately lead to improved spectrum efficiencies and overall public benefit through the services provided.

8.6 Amendment of a Radio Frequency Spectrum Licence (section 13 of draft Regulation)

(33) With regard to section 13(2), it is not clear why an amendment initiated by the Authority will necessarily always require invoking the procedure for withdrawal of the right to spectrum, which procedure seemingly has the objective to ultimately withdraw a spectrum licence and not only an amendment. Although the withdrawal of the right to spectrum could be applicable, it is foreseen that there could also be instances where the Authority requires the implementation of an amendment to a radio frequency spectrum licence, as also foreseen in the ECA in section 31(4). Telkom therefore recommends that the Authority change this provision to also allow for this scenario and to add the necessary procedures that will address the amendment of a spectrum licence. According to the Discussion document, this Regulation will only be invoked in exceptional circumstances, which again raises the issue of a suitable procedure for the Authority to amend radio frequency spectrum licences.

8.7 Leasing / Third party authorisation of a Radio Frequency Spectrum Licence Assignment (section 14 of draft Regulation)

(34) Telkom applauds the Authority for introducing leasing / third party authorisations of radio frequency spectrum use since this is another step in the direction of market-based spectrum management principles.

Telkom believes that this could substantially increase spectrum use efficiency in that it could make spectrum available to third parties where a licensee does not require same. It is however important that appropriate incentives be created to ensure that spectrum leasing takes effect.

- (35) It is clear from the provisions in section 14, in particular sections 14(2)(d) and (e) that the licensee ultimately remains responsible for the actions of the third party, including, amongst others, adherence to applicable regulations, control of harmful interference, etc. Telkom supports this principle. Considering these responsibilities and duties applicable to the licensee, the licensee should be allowed to charge professional fees for implementing and managing third party leasing agreements and the associated spectrum management functions. These should be agreed based on commercial terms and conditions between the licensee and the third party and should not be restricted through these regulations.
- (36) Telkom recommends that charging for spectrum under third party leasing should be left to the market (see also Telkom's comments made under section (32) above). Telkom therefore recommends that section 14(f) be deleted, or amended as required, in order to allow market principles to dictate the fees that are charged for third party leasing.
- (37) As a minimum, Telkom recommends the following amendment to section 14(f) "*...any ~~monies~~ spectrum fees paid by the lessee / third party...*". This will ensure that there is no doubt that this provision
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speaks only to the issue of spectrum fees and not to the other applicable fees as discussed in section (35) above.

- (38) Furthermore, it must be acknowledged that third party leasing will probably occur in those cases where a licensee received a national assignment and then lease the spectrum in smaller geographic areas, e.g. municipal districts, to third parties. It is not clear how the licensee will charge for these sub-leases and not exceed the original spectrum licence fee, in particular when several sub-leases occur. One approach could be to charge for the spectrum using the prescribed formula (e.g. point-to-area formula) on a case by case basis. However, after applying the point-to-area formula for a few sub-leases, the combined sub-leases will exceed the total licence fee paid by the licensee. This should however not be a concern for the Authority since it does improve spectrum use efficiency and brings services to the general public, which results in better service delivery.

9. PART V – Procedures for Radio Frequency Spectrum Licensing and Assignment

- (39) Telkom supports the three levels for spectrum applications as described by the Authority in PART V and believes these will streamline radio frequency spectrum applications. Furthermore, Telkom also broadly supports the typical application information pertaining to these three categories.
- (40) Furthermore, Telkom welcomes the Authority's decision regarding point-to-point link applications whereby an initial application will follow the Extended Application procedure and thereafter additional links could be applied for under the Standard Application procedure (section (2) of Annexure B). This will provide all required information to the Authority during the first application in any particular frequency band and thereafter streamline the application process for additional links.
- (41) Telkom would however request one further amendment, which relates to the Company information as required to be submitted under No.1 of the Standard Application Procedure (i.e. a copy of the Companies registration certificate and the name and address of directors and/or principle executives). This concern relates only to the amount of repetitive information that will be required for each point-to-point link application that is submitted. Whereas providing the required information is per-se not an issue and will be provided under the extended application procedure, requiring this information to be submitted repeatedly for each point-to-point link application will cause a substantial, and unnecessary, administrative burden on the licensee
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and on the Authority. This information does not change frequently and there should be no need to continuously resubmit copies of the same information. Where the information does change, it is reasonable that an update be submitted (which is required as part of Telkom's other licences in any event).

- (42) Telkom therefore recommends that Annexure C be amended to reflect the scenario for repeated applications to ensure that the same information is not sent repeatedly causing an unnecessary administrative burden on both the licensee and the Authority. This will go a long way in streamlining the process. Furthermore, in terms of section (3) of Annexure B, the Authority may, at any time, request the applicant to submit his application using the extended application procedure.

9.1 Standard application Procedures for a Radio Frequency Spectrum Licence and Assignment (section 15 of draft Regulations)

- (43) The reference to Annexure A (Spectrum license exemption) in section 15(1) should be amended to Annexure B (Categories subject to the Standard Application Procedure).

9.2 Extended Application Procedures (section 16 of draft Regulations)

- (44) Telkom supports the extended application procedure as contained in Annexure D of the draft Regulations.

9.3 Applications for Spectrum in High Demand (section 17 of draft Regulations)

(45) Whereas Telkom supports the process as envisaged in section 17 of the draft Regulations, Telkom submits that any ITA must be published for public consultation, as also discussed in section 6.3 above.

9.4 Procedures for the Amendment of a Radio frequency Spectrum Licence and Assignment by a licensee (section 21 of draft Regulations)

(46) Telkom recommends the addition of a new section 21(1)(f) relating to possible prejudice to other licensees as a result of an amendment to a spectrum licence. This should go some way in ensuring that an amendment is "*fair and does not prejudice other licensees*", as stated in section 31(4)(d) of the ECA.

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

10.1 Terms and Conditions of Sharing of Radio Frequency Spectrum (section 23 of draft Regulations)

- (47) Telkom fully supports the need to coordinate frequency spectrum assignments between spectrum licensees and in compliance with the applicable national and international regulations. However, it is paramount that licensees are aware of other licensees having frequency assignments in the same (or adjacent) frequency bands, which will require frequency coordination. Furthermore, prior to a new licensee receiving an assignment in any frequency band, frequency coordination procedures should be established, in consultation with the existing licensees. If this does not take place, harmful interference will probably result, impacting negatively on the services of licensees. These coordination procedures could be addressed as part of the assignment plans as addressed in section 5 of the draft Regulations.
- (48) Telkom recommends the addition of the following words to section 23(1) of the draft Regulation: “...*Spectrum Licences for all or part of the same or adjacent frequency assignment...*”. This is important since many cases of harmful interference are as a result of adjacent band interference between different radiocommunication services (e.g. aeronautical mobile into satellite services operating in adjacent frequency allocations).

- (49) Telkom agrees that Licensees should coordinate in good faith the use of the radio frequency spectrum, as also required in terms of the ECA (section 33(1)). It is however important to note that many of the sharing rules (e.g. maximum transmit power, guardbands, etc.) should be established at the outset when the channelling plan is designed. These sharing rules set the basis for successful frequency coordination between licensees.

10.2 Procedures for coordination within shared frequencies (section 24 of draft Regulations)

- (50) As indicated in section (47) above, it is important to also include the sharing criteria between services operating in adjacent frequency bands. Telkom therefore recommends that the required amendments be made to section 24, including its title.

10.3 Dispute Resolution in shared frequencies (section 25 of draft Regulations)

- (51) As indicated in section (47) above, it is important that dispute resolution also includes the case where adjacent frequency bands are shared. Telkom therefore recommends that the required amendments be made to section 24, including its title.
- (52) Telkom recommends that, after section 25(1), a section be included that addresses the time-frame for handover of the dispute by the Authority to the CCC.

11. PART VII – Withdrawal of the Right to Spectrum

11.1 Procedure for withdrawal of the Rights to Spectrum (section 27 of draft Regulations)

- (53) With regard to section 27(1)(e), Telkom recommends the following amendment: “...*identification of ~~any~~ appropriate alternative frequency locations for affected Radio Spectrum Licence Holders...*”. It is important to be clear that the alternative spectrum must be appropriate for the services and applications being affected.
- (54) Furthermore, it is important that the Authority addresses the issue of compensation or payment for migration in cases where a licensee must migrate to alternative spectrum in order to make spectrum available for the new entrant. For example, this could be funded from the auction fees raised through the auctioning of that spectrum (noting the practicability of implementation of such proposal). Also, access to spectrum could be conditional upon the new licensee compensating the current licensee for the migration of the current network. These could be addressed further as part of the development of the assignment plan for the particular frequency band (section 5 of the draft Regulations).

12. PART IX – Regulations to specific services

12.1 Electronic Communication Equipment dealer (section 28 of draft Regulations)

(55) Telkom has a serious concern regarding the practicability of implementation of this provision in its current form. Firstly, the term “*electronic communication equipment*” is not defined in either the draft Regulation or the ECA although it could very broadly be assumed to include all equipment used in connection with electronic communications. Furthermore, the term “*electronic communication facilities*” is defined in the ECA and this term is very broad and includes, for example, wires, cables, antenna, circuits, monitoring equipment, etc. The market for these electronic communication equipment and facilities is immense and it is not clear why the Authority would need to control this entire market, let alone the practicality of controlling this entire market. Also, it is not clear what provision in the ECA would allow the Authority to control this market as proposed in this provision.

(56) Nevertheless, considering section 32(1) of the ECA, which states that no person may be in possession of any radio apparatus without a spectrum licence, or being exempted from the need to have a spectrum licence, it would seem that the intent of this section is to cater for the scenario where dealers of radio apparatus cannot be in possession of a radio frequency spectrum licence although they are in possession of radio apparatus. This is also supported through certain provisions in the draft Regulations for example section 28(3) (reference to antenna),

section 28(4) (reference to radio frequency spectrum licence), etc. Telkom recommends that this be clarified.

- (57) If Telkom's understanding of the intent of this provision, as alluded to in section (56) above, is correct, Telkom recommends that PART IX be limited to dealers of "*radio apparatus*". This term is clearly defined in the ECA and also excludes subscriber equipment (as defined in the ECA), which is also critical. Several retail stores across the country sell subscriber equipment. It is unthinkable that the Authority intends that each employee at each retail store selling subscriber equipment be registered as an electronic communication equipment dealer. The way the provision is currently written will lead to this outcome, which will be impossible, and indeed unnecessary, to implement and control.
- (58) It should also be noted that radio equipment such as, for example, two-way radios, are not defined as subscriber equipment according to the ECA definition. This will therefore fall within the definition of radio apparatus, which will satisfy the Authority's need to manage these, if this definition is adopted.
- (59) It is also important to note that the previous Telecommunication Act, 1996 (Act No. 103 of 1996) contained a provision dealing with the registration of suppliers of telecommunication facilities and equipment (see section 56); this provision was however not transferred into the ECA, clearly indicating that the intent of the ECA is not to regulate suppliers of telecommunication equipment and facilities.

13. PART XI – Other

(60) This part must be renumbered (currently indicated as “*Part VIII*”).

13.1 Short title and commencement (section 46 of draft Regulations)

(61) Although the short title is given there is no indication as to when these Regulations will commence.

13.2 Repealed Regulations and Notices (section 47 of draft Regulations)

(62) Depending on the Authority’s vision regarding the Radio Frequency Spectrum Regulations, as addressed by Telkom in paragraph (5) above, Telkom recommends that the Government Gazettes listed below also be considered for possible inclusion in the draft Regulations, and subsequently be repealed, as required. Also, it is noted that some of these issues have already been addressed in the draft Regulations and it is therefore important that the current Regulations, dealing with the same issue, be repealed.

- a. Government Gazette No. 30472 dated 15 November 2007 (Notice 1655 of 2007) – Exemption of low power devices operating on FM Band II from licensing and/or type approval. This could be included into Annexure A in an appropriate way.
- b. Government Gazette No. 32885 dated 22 January 2010 (Notice 46 of 2010) – Official list of ICASA regulated standards for technical equipment and electronic communications facilities.
- c. Government Gazette No. 22443 dated 4 July 2001 (Notice 1623 of 2001) – Notice with respect to CT0 cordless telephones (this

Gazette is also referenced in Annexure A of the draft Regulations);

- d. Government Gazette No. 23212 fated 6 March 2002 (R.290) – Regulations in respect of the procedure for the registration of suppliers of telecommunication facilities and equipment;
- e. Government Gazette No. 23212 dated 6 March 2002 (R.291) – Regulations in regard to applications for radio frequency spectrum licences, station licences, certificates and authorities;
- f. Government Gazette No. 23212 dated 6 March 2002 (R.292) – Regulation in regard to applications for transfer of radio frequency spectrum licences, certificates and authorities;
- g. Government Gazette No. 23212 dated 6 March 2002 (R.293) – Regulations in respect of the amendment of radio frequency spectrum licences, certificates and authorities;
- h. Government Gazette No. 23212 dated 6 March 2002 (R.294) – Regulations in regards to procedure for obtaining a permit for possession of radio apparatus, the relevant application fee and the permit fee;
- i. Government Gazette No. 29685 dated 5 March 2007 (243 of 2007) – Personal Locator Beacon (PLB) Regulations;
- j. Government Gazette No. 21722 dated 3 November 2000 (Notice 4201 of 2000) – Notice of prohibition of CT1 Cordless Telephone sales and usage.

(63) Telkom recommends that the Authority also considers and include, as required, all spectrum related regulations dealing with the broadcasting services. This should be included under Part IX (Regulations for

specific services). If required, Telkom could provide a list of current regulations for consideration.

14. Annexure A. Apparatus exempts from Radio Frequency Spectrum Licences

- (64) It is noted that CEPR/ERC/REC 70-03 (“**Rec 70-03**”) was updated on 6th October 2010. Several amendments have been made, which should then also be reflected in Annexure A to ensure alignment with Rec 70-03 and to avoid discrepancies between these two documents. For example, the field strength limits for the frequency sub-bands between 9 to 135 kHz have been combined and relaxed (see REC 70-03).
- (65) The amendment pertaining to WLAN⁴ systems operating in the 2.4 GHz should be added to Annexure A. See Government Gazette No. 31321 dated 8 August 2010. This Gazette should then be repealed.
- (66) Telkom also recommends that the Spectrum Re-allocation for Radio Frequency Identification (RFID) Systems Regulation be added to Annexure A (see Government Gazette No. 31127 dated 5 June 2008 (Notice 713 of 2008)). This will combine all SRD type systems into one document. Government Gazette No. 31127 should then be repealed.
- (67) Telkom recommends that the Authority considers the ITU definitions of SRD devices as contained in Report ITU-R SM.2153 (Technical and operating parameters and spectrum use for short-range
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⁴ Wireless Local Area Network

radiocommunication devices) for inclusion in the Radio Frequency Spectrum Regulations.

- (68) Telkom wishes to highlight the following issues in Annexure A:
- a. 740-8800K should be 7400-8800 kHz
 - b. 35.00-25.25M should be 35.00-35.25 MHz
 - c. 5725-5875 MHz is seemingly deleted (strikethrough), it is recommended that this entry remains in the table
 - d. For the band 5725-5875 MHz (three entries), which is taken from SATFA, it is recommended that the table be completed and therefore the “*Type of Device*” and “*Relevant Standards*” should be added. These are critical in order to know what type of device is licence exempted and which corresponding standard will be used for the purpose of type approval.

15. Annexure B – Categories subject to the Standard Application Procedure

- (69) Telkom welcomes the application of the standard application procedure to additional point-to-point links operating under an existing licence. In order to avoid possible confusion Telkom recommends the following addition to section (2) of Annexure B: “...*he may apply for new links in the same frequency band to be assigned as an amendment to his licence...*”.
- (70) Furthermore, Telkom would also request the Authority to expand section (2) of Annexure B to also include applications for VSATs. The initial application for the HUB earth station and initial VSATs could be addressed through the Extended Application procedure; however, thereafter the addition of individual VSATs as the network is expanded, should be addressed through the Standard Application Procedure. Many VSAT terminals are added on a monthly basis. It is unreasonable, and will create a substantial administrative burden to both the Authority and the licensee, if all listed information required under the extended application procedure must be re-submitted for each VSAT term.
- (71) According to Annexure C (Applicant details, No. 4) the standard application procedure is also used for HF cross-border communications (within and beyond SADC). Since HF cross-border is not limited to “Shared simplex HF” (section 1(g)) it seems that Annexure B should be expanded to also include HF cross-border communications (fixed and mobile).
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16. Annexure C – Standard Application Procedures

- (72) According to section 31(2) of the ECA, a radio frequency spectrum licence is required in addition to any service licence contemplated in Chapter 3 of the ECA. Telkom therefore recommends that No.1 (Applicants Details) also request from the applicant an indication of its applicable service licence issued by the Authority in terms of Chapter 3 of the ECA. In addition, according to the Licensing Processes and Procedures Amendment Regulations (GG No. 33297 of 14 June 2010) a person intending to provide licence exempted services, including the operation, construction or maintenance of a PECN (Private Electronic Communications Network) must notify the Authority in the format as set out in Form M of this Regulation.
- (73) Sub-section (iii) Technical Information (System design) should be numbered sub-section (ii).

17. Annexure D – Extended Application Procedures

(74) According to section 31(2) of the ECA, a radio frequency spectrum licence is required in addition to any service licence contemplated in Chapter 3 of the ECA. Telkom therefore recommends that No.1 (Applicants Details) also request from the applicant an indication of its applicable service licence issued by the Authority in terms of Chapter 3 of the ECA. In addition, according to the Licensing Processes and Procedures Amendment Regulations (GG No. 33297 of 14 June 2010) a person intending to provide licence exempted services, including the operation, construction or maintenance of a PECN (Private Electronic Communications Network) must notify the Authority in the format as set out in Form M of this Regulation.

END