

## **TRANSNET RESPONSE DATED 30 APRIL 2009:**

### **DRAFT RADIO FREQUENCY SPECTRUM FEE REGULATIONS (GENERAL NOTICES 304 AND 305, GOVERNMENT GAZETTE 32029)**

#### **6. REQUEST FOR CONFIDENTIALITY**

In this submission, Transnet has included several "real life" examples of ways in which the proposed changes to the spectrum fee regime will materially affect its operations and its business in that the draft regulation, if approved, will have a significant negative effect on its ability to operate safely and legally, in compliance with the requirements of the Rail Safety Regulator (RSR), and will also have adverse financial implications for the group. The submission therefore contains technical, commercial and financial information, which is specific, proprietary, and confidential to Transnet.

**As a result, Transnet requests that Annexures A and B be treated as confidential under section 4D of the ICASA Act and omitted from the submission when it is published.**

#### **7. REQUEST FOR RIGHT TO MAKE ORAL REPRESENTATIONS**

Transnet notes that ICASA intends to hold public hearings and requests an opportunity to make representations at the hearings in due course.

#### **8. FORMAT OF THIS SUBMISSION**

In this written document, Transnet has:

- introduced its interest in the consultation in **paragraph 4**
- set out our general concerns in **paragraph 5**
- considered the international approach taken to pricing in **paragraph 6**
- considered the approach taken by ICASA as set out in the discussion paper in **paragraph 7**
- commented on aspects of the discussion paper in **paragraph 8**
- discussed specific aspects of the draft regulation in **paragraph 9**
- produced a case study by way of example of the effect of the application of the proposed regulation on Transnet, as **Annexure A (confidential)**
- attached a summary of the likely effect on Transnet of the draft regulation as **Annexure B (confidential)**

In making its arguments in this submission, Transnet has had regard to South African law and policy, and international studies and approaches in relation to the price for the use of spectrum, and treatment of spectrum allocated for state or public use, as well as more general commentary.

#### **9. TRANSNET'S INTEREST IN THE CONSULTATION**

Transnet has 3 principal concerns in its role as rail, port, and pipeline operator.

9.4.

4.1 First, Transnet holds several frequency spectrum licences, which are critical to the operation of its services, and it therefore has a material interest in the consultation. By this we mean that as Transnet is required to comply with various regulations and particularly with obligations in relation to rail safety and environmental protection, its ability to retain these licences and to use frequency in the appropriate bands is critical to Transnet.

9.4.1.

4.2 Second, as Transnet is a state-owned enterprise (**SOE**), Transnet's ability to pay is also a matter of concern.

4.3 Third, the Transnet rail network must necessarily traverse the entire country, and frequency will therefore be used in almost all the geographic areas proposed for consideration as factors by ICASA, and within various bands because of the need to operate trains, shunt trains, communicate with drivers, train operators and maintenance crews, and maintain a high degree of accuracy in directing train operations in general to ensure that safety standards are adhered to. Transnet will therefore be significantly negatively affected by the proposed draft regulation both financially and operationally. This is more so the case as there does not appear to be any form of exclusion or right to apply for exemption or sanction of operating methods which differ from those of a more mainstream telecommunications operator.

In addition, Transnet has concerns which are more general, which reflect its interest as an electronic communications services provider within South Africa, with an interest in ensuring that scarce resources are allocated fairly, efficiently and at a reasonable price, so as to not adversely affect the costs of operations, having regard to the nature and value of the spectrum.

## **10. INTRODUCTORY REMARKS AND CONCERNS**

Transnet welcomes the publication of a detailed discussion paper and the way in which ICASA has set out the principles upon which it wishes to rely. Transnet does, however, have a few key issues to raise in relation to the discussion paper, which are dealt with in paragraphs 5 and 7 of this response.

5.1 Transnet notes the key issues that have driven the publication of a new regulation as set out in section 1 of the draft discussion document. It is agreed that spectrum is a limited or scarce national resource. Because of the limited amount available for international use subject to co-ordination, and to eliminate interference, ICASA must allocate frequency according to the national plan. We deal with this in more detail in paragraph 6.1.

5.2 Transnet therefore agrees that it is important to incentivise the more efficient use of spectrum by licensees. It is also important to ensure that the value attached to spectrum is recognised in the price paid to use it. Finally it is important that spectrum prices reflect the administrative costs involved in planning and managing the relevant parts, which includes or will include, monitoring and managing interference. However, there is no information provided within the draft regulation about the actual costs to

ICASA of administration including allocation and monitoring, of spectrum in South Africa. We have dealt with this in more detail in paragraph 7 of this response.

- 5.3 The range of radio frequencies allocated to South Africa is administered by ICASA on behalf of the Minister of Communications. The Minister must approve the national radio frequency plan developed by the Authority, which must set out the specific frequency bands designated for use by particular types of services, taking into account the radio frequency spectrum bands allocated to the security services, which is amplified by subsection (6) which describes what the national frequency plan must do in more detail. However, Transnet is not aware of such a plan, therefore the precise nature of the allocations made, spectrum available, and types of use designated are not known. This is material in relation to our ability to comment properly and fully on the draft regulation. In particular it affects our ability to comment on the methodology for calculation of the fees suggested by ICASA.

## **11. International approach to pricing**

- 6.1 It is generally accepted that “administrative pricing”<sup>1</sup> encourages more efficient use of spectrum, whereas market-based approaches such as auctions, may be more appropriate in relation to large or significant assignments.
- 6.2 As we note elsewhere in our submission, as a scarce and important resource, it may well be necessary and other jurisdictions have recognised this, to charge based on demand as this relates to value, and ability of applicants to make optimal use of spectrum, which approach may result in the imposition of fees which are not related to the costs of administering the allocation and authorisation of the use of spectrum. Where demand is low, charges for spectrum would, according to this line of thinking, be related purely to administrative costs.
- 6.3 European regulators have in the past 5 or so years, begun aligning their approach to spectrum pricing with the introduction of the suite of electronic communications services directives including the Authorisation Directive. This has required some review of the basis of charging in the various Member States. In many cases, charges are apparently related to the costs of administration, planning, assignment to users, enforcement of licence conditions, and monitoring and research. Costs are grouped according to types of services, or otherwise simply calculated on the general costs of administration. Some costs are therefore direct (licensing and monitoring of a specific licence), and some will be indirect (monitoring of the market or band or type of service, enforcement, back office functions, participation in international organisations with a view to ensuring co-ordination, and management of the national plan.
- 6.4. Regulatory authorities have also given thought to how best they might require industry to recognise the value inherent in the use of scarce resources by affording industry to bid for bands where demand exceeds supply; or by holding “beauty contests” in which

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<sup>1</sup> “Administrative pricing” as this term is used in the draft regulation, reflects the economic value of the spectrum, which may include the costs to administer it, and is used to distinguish this tool from pricing pursuant to bids made in spectrum auctions. We note that elsewhere in the world the term “administrative pricing” is used for pricing of spectrum without reference to the costs of administration, which are referred to as “administration fees”.

applicants bid based on their ability to meet or exceed certain criteria including coverage, efficiency undertakings, service and quality records, promotion of competition and innovation in the relevant market, and so on. Hybrids are also common in Europe, where regulatory authorities first pre-qualify bidders on the sort of criteria listed above, and then hold an auction.

- 6.5. The studies also considered, in the European context, the need to license spectrum separately from services and networks, and how, if spectrum is to be separately licensed, the other costs charged to licensees might be factored into or taken account of, in calculating administration costs involved in the licensing of spectrum.
- 6.6. There may well not be one best approach in relation to the charging for spectrum, but what struck Transnet was the detail in which the issue has been considered internationally, in Europe and elsewhere, and the justification for the conclusions reached.

## **7. Comments on ICASA's approach to pricing as set out in the discussion paper**

### **Application fees**

- 7.1. If fees are to be charged for spectrum based on administrative incentive pricing (AIP), and not on the cost of administration, then the basis for charging an application fee at all is not clear.

### **Auction model**

- 7.2. Similarly, if the choice of pricing model is AIP, then when will ICASA choose to apply an auction model and how will the market know in advance how this will work?
- 7.3. ICASA refers to the auction model as "value-based pricing [which] provides a mechanism for compensating the public for the resource that has been rented out to consumers or service providers". In Transnet's view, the following 2 factors must be considered: (i) licensing amounts to a right to use a scarce resource which is valuable because of its scarcity and usefulness, and (ii) operators with access to cash will pay whatever they need to, to retain their competitive advantage using valuable spectrum, and auctions tend to exclude new entrants with limited resources.
- 7.4. Transnet does not support the auction model in particular for spectrum it is currently using for national operations.

### **Calculation of administration costs**

- 7.5. Because it is not clear from the draft discussion paper whether or not the costs of administration referred to by ICASA in the draft regulation have taken into account the contributions made to these costs by other licence categories (services and networks), or whether all costs to be borne by ICASA have been split across licence categories in some sort of calculated way, or if the DOC funds any of the international work carried

out by ICASA and the DOC on behalf of South Africa as member of the ITU, the basis for charging fees to cover costs of administration is not sufficiently clear to us.

- 7.6. Furthermore, the meaning of “expected changes in nominal costs reflected in the Consumer Price Index” is not clear in relation to spectrum. The CPI is the official measure of inflation in South Africa and is used to base interest rates on. Spectrum is a scarce national resource used for very specific technical purposes, which cannot be compared to the basket of goods used for purposes of assessing the cost to the consumer of daily life. In section 7.6.1 ICASA suggests that fees will be reviewed from time to time and are expected to increase with inflation. This is similarly not appropriate.
- 7.7. It is particularly difficult for Transnet to assess the appropriateness of costs proposed without understanding the basis on which ICASA might have used costs charged for international and regional ranges, relative to the South African environment and factors affecting the use of spectrum in South Africa, such as the factors affecting Transnet and other SOEs. (This draft will mainly affect bulk spectrum users, which are basically only SOE’s) Kenya, for example, is not usually used as a comparator for the South African electronic communications market because the similarities are not marked.

#### **Minimum fees**

- 7.8. Transnet does note that the fee of R120 proposed in **section 7.3** as the minimum fee, is as a sum, relatively small. Our concern is however, that the Minimum Price will apply to all simplex frequencies used by Transnet port, pipeline and rail operations, for shunting, telemeters, maintenance crews, UHF links and also every time the frequency is reused at a different location. This would therefore result (on the application of the Minimum Fee only) in an estimated total fee of some hundreds of thousands of rands, regardless of the additional fees payable based on the methodology outlined in the regulation. In **Appendix A (confidential)** we have set out a case study demonstrating the total fees likely to be payable by Transnet which indicates the radical increase to Transnet in spectrum fees.
- 7.9. Transnet queries the statement in **section 7.6** of the discussion paper that only the fees for maritime, amateur, and aeronautical activities will be set at the minimum, or if the minimum applies for all applications as a minimum, as suggested in section 7.3?

#### **Multiyear licences**

- 7.10. The option proposed by ICASA at **section 7.4** to allow multi-year licences subject to the payment of an upfront payment (with a discount) is welcome.

#### **Application of pricing principles**

- 7.11. Transnet does not understand the reference to “one dimension of freedom” referred to in **section 7.5** of the discussion paper. This phrase suggests that ICASA might wish to choose how to apply the pricing principles from time to time, which would tend to create uncertainty for licensees. This is borne out by the suggestion that ICASA may in some

cases, also use the auction method of spectrum pricing, which we have commented on in paragraph 7.2 above.

## 8. COMMENTS ON OTHER ASPECTS OF THE DISCUSSION PAPER

### Geographic factor

- 8.1. It is unclear how the factors applying to the geographic element discussed in **section 7.2.3** of the discussion paper have been determined. The various factors and their application may, however, negatively affect Transnet, whose railway network must necessarily operate nationally to the same high standard, using technology which is appropriate to and required for the safe operation of railway networks and rolling stock. We are also concerned about the statement that "Where an assignment covers more than one type of area, the GEO factor will reflect the higher value area (1); this ruling also applies to nation wide assignments." This means that Transnet must look at the "urban" calculation for all its microwave links, and apply the higher factor across the full extent of its spectrum, for national use, which will be likely to result in a very significant total cost. Considering a fee is charged for each microwave link frequency each time it is used, it is felt that each link should be considered on its own criteria as there is a vast difference in value (which translates to cost) between a link used in a rural (low density) and urban (high density) area.
- 8.2. By way of example, if we assume a 2.1Ghz link with a bandwidth of 28Mhz is used in (A) a low density (0.5), non congested (1) area, and (B) in a high density (1), congested (1.5) area, all other criteria being equal, and Transnet have 271 links in this band, the calculation for each of (A) (rural) and (B) (urban) would be the following:

$$\text{Fee} = 2000 \times \text{FREQ} \times \text{BW} \times \text{CG} \times \text{GEO} \times \text{SHR} \times \text{HOPMINI} \times \text{UNIBI}$$

**(A) 2.1Ghz, 28mhz BW, rural area, 271 links.**

Fee =  $2000 \times 0.4 \times 28 \times 1 \times 0.5 \times 1 \times 1 \times 1 = \text{R}11,200$  per link.

**271 links @ R11200 = R3,035,200**

**(B) 2.1Ghz, 28mhz BW, urban area. 271 links**

Fee =  $2000 \times 0.4 \times 28 \times 1.5 \times 1 \times 1 \times 1 \times 1 = \text{R}33,600$  per link.

**271 links @ R33600 = R9,105,600**

The difference is obviously very significant.

### ASTER factor

- 8.3 Given that most repeater licences specify a transmit power of 20 watt ERP, it is unclear to Transnet what the ASTER factor is which should be applicable for VHF and UHF systems (and here we are referring to **section 7.2.6** of the discussion paper). The example given in **section 7.6.4** is incorrect in our view. If compared with "worked example" in section 7.5.2 using an ASTER factor of 56 compared to an ASTER factor of 180 makes a significant financial difference. (R4,200 @ aster 56 against R13,500 @ aster 180)

## **Station fees**

- 8.4 Application of the formulae to Transnet current frequency spectrum usage suggests that Transnet will have to face major and unbudgeted financial costs. Transnet must of necessity use the number of stations that it does, there is no question that it operates otherwise than efficiently. We request ICASA to consider whether it would be possible to offer discounts for bulk and SOE users, such as Transnet; especially since its use will be non-commercial. The magnitude of the resulting fee increase to Transnet will otherwise be punitive.
- 8.5 It will be important in relation to stations used as set out in **section 7.6.7** that ICASA nonetheless considers the parameters of each station in order to measure or monitor interference, radiation, power output, and general technical characteristics. Transnet therefore supports section 7.6.7 in all other respects.
- 8.6. Transnet disagrees respectfully but strongly with the statement made in **section 7.7** that the new system “does not necessarily cause the Radio Frequency Spectrum to become more expensive, but it remains a scarce resource”. We disagree that spectrum will not be more expensive as we will demonstrate by using an actual case study, attached as **Annexure A (confidential)**. The current licence fees paid by Transnet are likely to increase by more than 600%.
- 8.7. Whilst Transnet agree that licence fees have been kept artificially low over the years, Transnet feels strongly that such an increase would amount to a penalty in circumstances where it could not have been foreseeable to industry or spectrum users that such a radical increase was to be expected. The magnitude of the potential increase is also arguably unreasonable in the circumstances, since industry has had no warning or expectation of an increase of this amount, and this is a preliminary consultation, and the first of its kind in almost a decade.

## **9. COMMENTS ON THE DRAFT REGULATION**

For the sake of clarity and ease of reading, we have in some cases repeated our assertions from paragraphs 5 to 8 above.

### **9.1 Purpose of the regulation (reg 2)**

We are unclear on the difference between the purpose of the regulation as set out in regulation 2, and the objective of the regulation, set out in regulation 3 (the numbering of regulation 3 is repeated). The purpose seems to be limited to the standardisation of the fees and pricing with a view to (i) promoting efficiency in use and (ii) conformity with international standards in relation to usage. The objective on the other hand, seems to expand on these points but nonetheless essentially repeats them, but in addition, states that the regulation is also intended to “ensure that the costs of managing and monitoring the radio frequency spectrum are at least covered by fee income”.

We suggest that regulations 2 and 3 be merged, but with a clear objective. If, as ICASA has set out several times in the discussion paper, the objective is twofold – namely to incentivise efficiency and to recoup administrative expenses, then this should be made clear.

## 9.2 **Objective of the regulation (reg 3)**

As set out above, we recommend that the objective and purpose be streamlined and clarified. In addition, we note that subsection (5) of regulation 3 refers to government policy objectives of “even development of telecommunications infrastructure across South Africa”. This has not been canvassed in the discussion paper and we are not aware of the policy referred to. In addition, the statement refers to policy in relation to infrastructure, and not spectrum, and we are not able to comment on whether or not the policy therefore extends to spectrum and so whether or not it is appropriate to refer to it here.

We note with concern that the regulation is stated at subsection (1) to deal with AIP but not to preclude the use of auctions or other methods of determining price. In the interests of regulatory certainty, transparency and administrative fairness, we suggest that the regulation deal only with the proposed methodology and that ICASA thereafter be bound by that methodology except in specified and pre-identified instances. Currently there are no such instances specified in the regulation and it is therefore unclear when and if ICASA might change the proposed pricing methodology and require industry participants or new entrants to bid for spectrum they otherwise assumed they would pay a fixed price for.

## 9.3 **Definitions (reg 3 (repeated))**

**ASTER:** We suggest the word “reserved” be used instead of “denied”, and that the sentence be amended to read “means the Area Sterilised Factor that is applied to reflect *the area that is reserved to particular users* of a frequency assignment”.

**CG:** we suggest that the phrase “frequency spectrum” be amended to “bandwidth” or “band”.

**Minimum Fee:** we recommend a change to clarify this sentence, so that it reads “means the minimum fee *to be paid for* a radio frequency spectrum licence, *as determined by ICASA from time to time*”, and further recommend that the term be used consistently throughout the document, as there are references to “minimum price” as well as “minimum fee”. In addition, clarification is sought as to whether or not ICASA intends to use capitals for defined terms, as these are capitalised in some cases, but not in others. We have made submissions on the Minimum Fee principles above in paragraph 5.

## 9.4 **Fee determination (reg 4)**

It is suggested in the discussion paper that ICASA might apply different formulae from time to time, or use auction pricing in relation to certain bands of frequency. This is at

odds with the provisions of subsection (a) which states that “the fees payable for each category... *must* either be as determined by a pricing formula as described in these Regulations, or by application of the [m]inimum [f]ee.” We recommend that for administrative certainty and fairness, ICASA state in subsection (c) in what circumstances the fee might be reviewed or revised. It would also be helpful and equitable to know in advance that ICASA does not anticipate a change in fees in the foreseeable future, which is a fixed period to be mentioned in the regulations or be set out in a fixed-term licence.

#### 9.5 **Exceptions (reg 5)**

Transnet is not clear on why equipment would ever need to be licensed (by which we mean something other than type-approved). In terms of the ECA, the provision of electronic communications network services (**ECNS**) or electronic communications services (**ECS**) must be licensed in accordance with section 5, unless those services are exempt under section 6. In the past we are aware that fees were levied on the installation of certain satellite equipment such as ground stations but this is not the same under the ECA, as licensing the use of such equipment. With respect, Transnet also submits that fees should no longer apply to the use of equipment for purposes of providing ECNS or ECS, since the provision of services pursuant to a licence is in any event subject to the payment of licence fees under different regulations. With this in mind, Transnet also submits that regulations 6(c) and (d) should be omitted except insofar as the fee is relevant to the frequency used by the station concerned.

As set out above in paragraph 8, Transnet submits that ICASA should stipulate in what circumstances, when, and on what criteria ICASA might decide to auction spectrum, given that the purpose of the regulation is stated to be, amongst other things, to cover administrative costs and incentivise efficient use of spectrum.

We assume that licensees offering ECNS in addition to BCS will be subject to RF fees to the extent that they use radio frequency spectrum?

#### 9.6 **Formulae (reg 6) and Unit Price (reg 7)**

Transnet refers ICASA to **Annexure A (confidential)** which contains a case study in response to the proposed formulae, which is intended to demonstrate the effect of the potential methodology on its own business, if implemented.

#### 9.7 **Factors and look up table (reg 8)**

We disagree with the suggestion in subsection (c)(iii) that the highest GEO factor be applied. In Transnet’s case, this would result in the highest factor applying simply because Transnet is required to provide a national network and therefore part of its network traverses the geographic area with the highest factor. We have set out in more detail our assertions in this regard with an example, in paragraph 8 above.

#### 9.8 **Minimum Fees (reg 9)**

We have suggested elsewhere that defined terms be used consistently as to capitals and phrasing.

It may be simpler to say in this regard that the Minimum Fee always applies, therefore that the fee payable will be the greater of the Minimum Fee or the fee determined by the application of the relevant formula.

See our comments above in paragraph 9.6.1 in relation to charging for satellite terminals.

#### 9.9 **Multi Year licences (reg 10)**

Transnet would be pleased to understand how the factors for multi-year licences have been determined in order to comment more meaningfully on this.

Transnet queries why the maximum period for a licence in subsection (d) is 5 years.

We would be grateful if ICASA could clarify whether or not a licensee may obtain more than 1 multi-year licence at a time, in relation to the same or different frequencies.

#### 9.10 **Table of fees by type of radiofrequency licence (reg 11)**

Transnet refers ICASA to **Annexure A (confidential)** which contains a case study in response to the proposed formulae, which is intended to demonstrate the effect of the potential methodology on its own business, if implemented.

#### 9.11 **Regs 12-13**

Transnet would be grateful to understand from ICASA why information on equipment is necessary in relation to the grant of and charging for an RF licence, since equipment is not relevant to licensing of RF for the reasons set out above in paragraph 8; unless its is to confirm that only ICASA approved equipment is used and geographical location for ease of interference location.

Transnet notes that the assignment of spectrum and grant of licences is at the discretion of ICASA, but Transnet would like to understand the basis on which an assignment might be refused. In addition, the requirements for the provision of information have yet to be published, so it is not possible to understand what compliance costs might have to be borne by a prospective applicant in addition to the costs of the assignment of a licence.

# CONFIDENTIAL

## ANNEXURE A

### CASE STUDY: Transnet spectrum usage and financial implications

In this document Transnet has set out, using its own confidential financial and operational information, the way in which the proposed fee calculation methodology will impact it financially. This is presented to ICASA by way of example and is not intended to be an actual representation of the current or accurate position, although it is more or less correct for the purposes for which it is intended, namely to demonstrate the financial effect of the proposed formulae on Transnet, if adopted.

#### **SUMMARY OF NEW FEES BY UTILISATION OF APPLICABLE FORMULAE**

Above 1GHz	4,775,470
Below 1 GHz	1,591,890
<b>Total</b>	<b>6,128,995</b>
(Calculated using rural link/urban link and quantity formulae)	

#### **POINT TO AREA FORMULA**

**Formula used:**

**Fee = UNIT x FREQ x BW x CG x GEO x SHR x ASTER**

This formula will be used to determine the applicable fee for each trunk, RTO and telecontrol repeater. It also applies to shunt channels. Using the given tables for the various factors and using an average 30km radius (ASTER = 56) of coverage for a UHF network, the following example is presented:-

Fee = 2000 x 0.75 x 0.0125 x 1.5 x 1 x 1 x 56 = R1575 per repeater

Current Equipment in use:-

Trunking Repeaters

314 @ R1575 = R494,550

RTO Repeaters

428 @ R1575 = R674,100

**TOTAL NEW FEE FOR REPEATERS**

**= R1,168,650 PER ANNUM**

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Exact figures for shunting equipment are not available at this point in time, therefore an estimate of 350 channels (channels will be reused) will be used for this exercise.

**Fee = 2000 x 0.75 x 0.0125 x 1.5 x 1 x 1 x 2 = R56.25 per shunt channel.**

This is less than the Minimum Fee, therefore the Minimum Fee of R120 per shunt channel applies.

**TOTAL NEW FEE FOR SHUNT CHANNELS 350 @ R120 = R42,000 PER ANNUM**

### POINT TO POINT FORMULA

**Formula used:**

**Fee = 2000 x FREQ x BW x CG x GEO x SHR x HOPMINI x UNIBI**

This formula will be used to determine the applicable fee for each UHF and microwave link.

Using the given tables for the various factors and using an average 30km range per 12.5khz bandwidth UHF link (with an estimated 300 links in service), the following example is presented for UHF links:-

$2000 \times 0.75 \times 0.0125 \times 1.5 \times 1 \times 1 \times 1.826 \times 1 = R51.36$  per UHF link.

This is less than the Minimum Fee, therefore the Minimum Fee of R120 per link will be applied.

**NEW FEE FOR UHF LINKS 300 @ R120 = R36,000**

The applicable microwave link fee will vary depending on frequency, bandwidth, hop distance and whether the link is in a rural or urban (congested) area.

**Formula used:**

**Fee = 2000 x FREQ x BW x CG x GEO x SHR x HOPMINI x UNIBI**

**Fee if calculated on the basis of factor for rural links: R1,591,890**

**Fee if calculated on the basis of factor for urban links: R4,775,470**

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## **ANNEXURE B:**

### **SUMMARY OF EFFECTS OF DRAFT (IF IMPLEMENTED) ON TRANSNET**

1. The current aggregate RF licence fee payable by Transnet will increase by almost 600%, an increase which is neither budgeted for nor reasonable in our view. The methodology proposed for the calculation of fees in relation to spectrum used in rural or urban areas will have a particularly detrimental effect on national network operators.
2. Transnet currently makes use of bulk spectrum issues which allows the controlled reuse of frequencies without interference. This does not appear to be possible in the future as ICASA will not take existing allocated frequencies into consideration when issuing a new frequency. Frequencies within a block will now be issued to other licensees as well, making it even more difficult to operate safely on an interference-free basis, or to locate interference sources.
3. Application will have to be made for a new licence each time an existing frequency is reused at a different location, this will cause serious delays in future roll outs and changes required in the event of interference or network changes. These delays will have an adverse effect on rail and general safety.
4. The administration load imposed by this new draft regulation will require additional people and resources which will not add any benefits and increase the cost of doing business.
5. Transnet's use of frequency is not principally or mainly directed at nor is it intended for commercial electronic communications purposes. Applying the formula in the manner proposed, and suggesting that ICASA may, in the future, make use of auctions as a way to garner revenue for spectrum, will have the effect of a penalty on Transnet, dependant as it is for the spectrum it uses for its principal and core business. The amount and type of spectrum used by Transnet is necessary and indeed, integral to its operations, and not used wantonly or inefficiently.
6. Transnet, as an SOE, is required to decrease the cost of doing business in South Africa where possible. Over time it has made this a priority and Transnet is widely considered to play a pivotal role in our economy. Increasing the fees in the manner proposed, will have the effect of increasing the cost to Transnet of providing essential services, and so will increase the cost to the general market and have a detrimental effect on the economy.
7. Although the regulation does not currently provide for exceptions to be made to the general application of the formulae, principles, and criteria, Transnet would be grateful to discuss with ICASA whether certain allocations might be made to it on the basis of the various Transnet-specific arguments set out above. Transnet will continue to work

closely with ICASA's spectrum management team in relation to monitoring, co-ordination, allocation, issue, use and re-use.