



**Submission on the
Draft Radio Frequency Spectrum Regulations
published in terms of sections 4(1)(d), 4(2)(b), 31(6) and 31(3) read with section 4(4)
of the Electronic Communications Act 36 of 2005¹**

INTRODUCTORY REMARKS

1. The Wireless Access Providers' Association (WAPA) welcomes the publication of the Draft Regulations and the accompanying Reasons Document and believes that the proposed approach set out in the Draft Regulations is generally sound and likely to increase the efficiency of radio frequency spectrum ("spectrum") management in South Africa.
2. WAPA requests that a slot be reserved for it to make oral representations should the Authority decide to hold public hearings.

ABOUT THE WIRELESS ACCESS PROVIDERS' ASSOCIATION (WAPA)

3. WAPA is an association not for gain, registered under the Non-Profit Organisations Act, which seeks to play a constructive role in ensuring the efficient, sustainable use of wireless spectrum, both as a self-regulatory body and as a lobby for the introduction of innovative spectrum management techniques such as shared usage and "lite" licensing models.
4. WAPA represents a rapidly-growing number of Fixed Wireless Access (FWA) providers, ISPs and equipment vendors currently using or with an interest in licence exempt bands. While use of these bands for the provision of access services in South Africa is not well-documented, it is clear that there is significant demand present, mainly due to the fact that licensed spectrum is currently not available from the Authority notwithstanding WAPA members' entitlement thereto as holders of ECNS licensing. Many of WAPA's members have indicated that they will seek assignments of suitable radio frequency spectrum once these become available.
5. WAPA members focus on using open standard wireless technologies such as the 802.11 Wi-Fi standards. The average WAPA member is an SMME providing extensive coverage of rural areas in South Africa where there is no cost-effective alternative access means. Free or E-rated Internet

¹ Published as General Notice 925 of 2010 in Government Gazette 33590 on 29 September 2010

services, including the underlying ECNS service, are provided to a large number of schools and other social responsibility programmes.

6. WAPA has identified a need for a body other than ICASA to take steps to address interference and other issues in the licence-exempt bands which ICASA has no mandate under the ECA to manage. Such a body should also seek to minimise the potential of users of licence-exempt bands causing interference to services provided by licensed users and other unlicensed users.
7. WAPA enforces a Code of Conduct which is focused on wireless activities, an enforcement process, certification and training and a forum for sharing knowledge and resolving technical problems. The Code emphasises consumer protection issues and a copy can be downloaded from the [WAPA website](#).
8. WAPA also works with registered equipment suppliers to promote the enforcement of type approval regulations by such suppliers as well as WAPA members.
9. The Draft Regulations are accordingly directly relevant to WAPA's membership.

GENERAL REMARKS

10. WAPA has had sight of the submission prepared on behalf of the Internet Service Providers' Association (ISPA) and wishes to align itself with such submission, being supportive of the entire content thereof.
11. WAPA, as an industry body specifically seeking to advance the interests of FWA providers, wishes to make certain further submissions in the hope that these will be of assistance to the Authority in its further deliberations.

SUB-ASSIGNMENT AND LEASING OF SPECTRUM

12. WAPA strongly welcomes the flexible spectrum management tools which the Authority proposes to introduce. WAPA believes that the introduction of a secondary market for trading – on a non-profit basis – in spectrum may be a significant driver towards the liberalisation of spectrum in South Africa.
13. It is common knowledge that the majority of the spectrum in South Africa – particularly in the so-called access bands – is concentrated in the hands of a few licensees as a legacy of the monopolies and privileges in place under the Telecommunications Act of 1996. WAPA is hopeful that introducing rights to transfer spectrum licences and allow the sub-leasing of spectrum will create the basis for a more equitable distribution of frequency which will in turn promote competition and the lowering of prices.

14. WAPA submits that the time for withdrawing spectrum licences from entities which seem to regard themselves as having been awarded permanent assignments and who are not utilising this spectrum efficiently or at all is now long overdue. It is evident that spectrum hoarding is being practised by some operators as an anti-competitive device and WAPA welcomes the establishment in the Draft Regulations of a basis for dealing with this. WAPA urges the Authority to take strong action against those who are holding back competition in the provision of wireless local loop and backhaul services at the earliest possible opportunity and believes the benefits in terms of the attainment of socio-economic policy objectives to be obvious.

SHARING OF SPECTRUM

15. WAPA has as one of its primary objectives the promotion of the development of a sustainable frequency sharing model in South Africa and believes that this is a key intervention in raising spectrum efficiency and providing opportunities for new entrants. WAPA accordingly welcomes the focus in the Regulations on the sharing and co-ordination of sharing of spectrum.

16. As noted in our submission on the Radio Frequency Spectrum Licence Fee Regulations, WAPA supports the use of a sharing factor (SHR) in the formula for the calculation of annual frequency spectrum licence fees and agrees that the Authority should seek to incentivise the sustainable sharing of frequency where this is possible. WAPA notes that frequency sharing has an important role to play in increasing the participation of SMMEs in the industry by making access to licensed frequency more affordable for such entities.

17. WAPA's members have resolved to investigate the co-ordinated sharing of a national frequency assignment on a geographical basis. It is proposed that WAPA itself act as an interface between ICASA, as the legislatively-empowered regulator, and those using such an assignment of spectrum on a shared basis under a form of "lite" licensing model.

17.1. "Lite Licensing" is a progressive frequency allocation model under which ECNS licensees pay a relatively small fee for a nationwide, non-exclusive license. These licensees then pay an additional nominal fee for each base station they deploy. All base stations must be clearly identifiable (and the GPS co-ordinates registered with WAPA/ICASA) and, in the event that these stations cause interference which cannot be mediated by technical means, licensees are required to resolve the dispute between themselves (or with the assistance of WAPA).

18. WAPA would welcome the opportunity to engage with the Authority regarding the desirability and feasibility of its plans in this regard.

ELECTRONIC COMMUNICATIONS EQUIPMENT DEALERS

19. WAPA is concerned that the provisions relating to electronic communications equipment dealers are:

19.1. Overly broad in their scope, and

19.2. Unduly onerous insofar as such dealers are effectively required to become an extension of the ICASA's enforcement function.

20. The term "electronic communications equipment" is not defined in the Regulations or the ECA and it is not clear from the use of this term what the Authority intends it to cover. WAPA requests that the Authority consider providing a definition of this term to avoid future confusion.

20.1. For example: is a handset such as a mobile phone regarded as electronic communications equipment such that it falls within the meaning of this term for the purposes of regulation 28 of the Regulations? Does any person which sells such a handset have to obtain an electronic communication equipment dealer certificate and will they be subject to the restrictions regarding demonstrating the workings of such equipment in the absence of holding the relevant spectrum licence? Insofar as regulation 28 requires the collection of a variety of information and the keeping of a register of this information, is it the intention of the Authority that this information be obtained for sales of equipment to consumers?

21. WAPA submits that the more correct term to use in this context is "radio apparatus" as that term is defined in section 1 of the Electronic Communications Act:

"radio apparatus" means an electronic communications facility which is capable of transmitting or receiving any signal by radio, excluding subscriber equipment, if such subscriber equipment is used solely for that purpose;

21.1. This definition is immediately more suitable as it refers only to equipment used in connection with spectrum and therefore fits within the context of the Regulations.

21.2. It also has the further advantage of excluding subscriber equipment (where used solely as subscriber equipment) as that term is defined in the Act² and thereby avoiding the

² "**subscriber equipment**" means any device which is used by a subscriber to access, use or receive the services of a licensee referred to in Chapter 3 or the services of a person providing a service pursuant to a licence exemption, including without limitation, a telephone, regardless of technology such as IP (internet protocol) phones, mobile phones, publicly available phones; a handset, a computing device such as a personal

imposition of unnecessary restrictions on the sale and/or possession of equipment which is not regulated or intended to be regulated under the Act.

21.3. The exclusion of subscriber equipment further makes it clear that retailers selling handsets are not required to collect and keep the specified information.

22. WAPA members who are hardware vendors have expressed the following concerns regarding the proposed regulation 28:

22.1. The regulation fails to distinguish between equipment intended for indoor use and equipment intended for outdoor use. Equipment vendors are not and cannot always be aware of the intended use of equipment and that products intended for indoor use are often stripped down, built into enclosures and then used as a component of an outdoor network.

22.2. There is confusion regarding the licence exempt use of wireless products and regulation 28 does not expressly cater for the possession of radio apparatus and the demonstration of the performance of such apparatus where the apparatus falls within Annexure A to the Regulations as being licence exempt.

22.2.1. Sub-regulation 28(3) indicates that equipment in the possession of an equipment dealer should be disconnected from any power supply and antenna, except in cases where a radio frequency spectrum licence has been issued by the Authority to that dealer. This does not cover circumstances where no radio frequency spectrum licence is required for the operation of this equipment.

22.2.2. Section 32(1) of the Act explicitly envisages the possession of radio apparatus where a person is exempted as prescribed in terms of section 31(6) of the Act.

22.3. The position set out in sub-regulation 28(2) with regard to who needs to be in possession of an electronic communication equipment dealer certificate requires clarification. WAPA submits that it would be unduly onerous to require the employees of a juristic person which is in possession of a valid certificate to themselves be issued with a certificate as such employees should automatically fall under the authority of the certificate issued to their employer. To do otherwise means that it is in effect meaningless to issue certificates to juristic entities.

PERMIT FOR POSSESSION OF RADIO APPARATUS WITHOUT A SPECTRUM LICENCE BEING ISSUED

23. WAPA wishes to clarify its understanding that this regulation applies to electronic communications equipment dealers / radio apparatus dealers and not to those who possess electronic communications equipment / radio apparatus pursuant to the holding of a valid ECNS licence.

OFFENCES AND PENALTIES

24. WAPA seeks an explanation from the Authority as to the basis on which fines in respect of non-compliance with the regulations regarding the licence exempt bands and related radio apparatus are set at a maximum of R500 000 whereas fines in respect of non-compliance with all other regulations is set at R200 000. WAPA is unable to understand the basis for or logic underpinning this distinction.

CONCLUSION

25. We thank you for your time in considering the above submissions and are available to provide any further information which you may require.
