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12 October 2012

**Mr Maanyapelo Richard Makgotlho**

Independent Communications Authority of South Africa  
Block C, Pinmill Farm  
164 Katherine Street  
Sandton

**Delivered via email to:- [rmakgotlho@icasa.org.za](mailto:rmakgotlho@icasa.org.za)**

Dear Mr Makgotlho,

**RE: SUBMISSION ON THE DRAFT ELECTRONIC COMMUNICATIONS AMENDMENT BILL, 2012.**

1. Smile Communications (Pty) Ltd ("Smile") hereby submits its comments on the Draft Frequency Migration Regulations & Frequency Migration Plan published by ICASA in Government Notice 606 of 17 August contained in Government Gazette 35598.
2. Smile would like to participate in any public or consultative process that the Authority may convene.
3. We trust you find this order. Kindly acknowledge receipt of our submission.

Thank you and warm regards,

**Thato Mahapa**  
**Senior Manager: Legal and Regulatory**





**SMILE'S WRITTEN SUBMISSION IN RESPONSE TO THE DRAFT  
FREQUENCY MIGRATION REGULATIONS AND FREQUENCY  
MIGRATION PLAN**

Notice No. 606 issued under Government Gazette 35598  
dated 17 August 2012

**SUBMISSION DATE: 12 OCTOBER 2012**

## 1. INTRODUCTION

- 1.1 Smile Communications (Pty) Ltd (“Smile”) welcomes the opportunity to comment on the Draft Frequency Migration Regulations & Frequency Migration Plan published by ICASA in Government Notice 606 of 17 August contained in Government Gazette 35598. As a new entrant in the sector, Smile intends to offer high quality and affordable communications services in South Africa (“SA”).
- 1.2 Should there be any further consultative process which the Authority may undertake including the convening of public hearings, Smile confirms that it would like to participate in such a process. Smile also commends the Authority for affording an extended period for comments to allow the industry an opportunity to fully engage with the submission.
- 1.3 Smile is presently fully licensed to operate national networks and provide communications services in Uganda, Nigeria, Tanzania and the Democratic Republic of Congo. Whilst Smile is in possession of a network and service licence in SA, Smile has no access to radio frequency spectrum which is a key enabler for our service offering. We are of the firm belief that the current process is absolutely critical and will go a long way to achieving the Authority’s stated objective of liberalising the sector through the licensing of additional players.
- 1.4 We wish to reiterate our previous submission in response to the **“800 MHz AND 2.6 GHz Draft Spectrum Assignment Plan”** published in Notices 911 and 912 issued under Government Gazette No 34872 on 15 December 2011 and also reaffirm our support for the Authority’s approach to spectrum as detailed in that submission.
- 1.5 As the Authority is aware, Smile is in possession of Individual Electronic Communications Network Service (IECNS) as well as Individual Electronic Communications Service (IECS) licences and has been trying in earnest to launch services in the South African market since 2007. The regulatory framework has however not enabled the award of key frequency spectrum to operators; an impediment that has negatively affected the introduction of new entrants into the South African market, thus lowering universal access and service and the contribution of the sector to socio economic development and economic growth.
- 1.6 Lastly, we believe that, in the near future once the Authority issues the relevant spectrum assignment to Smile, we will be able to extend our service offering to the citizens of the Republic and uplift the lives of people as well as improve the productivity of communities, schools, and institutions in SA. This will also allow Smile to contribute to

the attainment of the government targets in respect of the Information and Communications Technology (“ICT”) sector i.e. 100% broadband penetration by 2020 and the creation of 150,000 direct and indirect jobs by 2020<sup>1</sup>.

1.7 Our brief specific comments on the draft regulations appear below.

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<sup>1</sup> Honourable Minister of Communications, “Budget Vote of the Department of Communications” 31 May 2011

## 2. SMILE'S SPECIFIC COMMENTS ON THE DRAFT REGULATIONS

### 2.1 Principles Underpinning Radio Frequency Spectrum Migration

Smile notes and concurs with the principles stated by the Authority in regulation 3. However, we believe that an additional principle should be adopted which seeks to ensure that the National Radio Frequency Plan under development always maintains not only efficient spectrum planning but guarantees efficient spectrum usage by the entities allocated the relevant spectrum.

The inclusion of this principle will not improve the Authority's ability to monitor spectrum but allow the Authority to effectively deal with inefficient usage through the implementation of the "*Use It Or Lose It*" approach.

### 2.2 Process for Radio Frequency Migration

Smile supports the process laid out in regulation 4. In light of the foregoing regarding the expansion of the principles to be adopted, we think that regulation 4 would be the appropriate place to include a detailed approach to the implementation of the "*Use it or Lose It*" approach. It would be most unfortunate if the Authority adopted the inefficiencies associated with the current National Radio Frequency Plan into the revised and futuristic plan. This is an ideal opportunity for the Authority to introduce improvements to its regulatory processes to update current practices and bring them in line with International Best practice as evidenced by the Authority's research attached as an Annex to the Part 2 of the regulations (Draft Radio Frequency Migration Plan).

Whilst we are not in a position to detail the exact mechanics of that approach, we believe the Authority is quite capable of developing that process and already has a wealth of information on that very subject as evidenced in the Annex referred to.

Overall, we believe that the process should also go as far:

- Reviewing the current allocation of any existing licensee;
- Reviewing the actual usage by that licensee of the allocated spectrum;
- Evaluating the spectrum needs of that licensee using the "Hypothetical Efficient Licensee" as against the current allocation;
- Utilizing the outcome of the exercise above to inform the Authority as to what would be a sufficient allocation within the migrated spectrum; and

- Setting out the stringent conditions under which a licensee should be allowed to justify the retaining of spectrum that is not being used or being used inefficiently.

### **3. CONCLUSION**

- 3.1 Once again, Smile is thankful to the Authority for affording it the opportunity to submit comment on the Draft Regulations and we look forward to further engagements with the Authority on this matter, including participating at public hearings.