
GENERAL NOTICE

NOTICE 386 OF 2015

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS ON RADIO FREQUENCY SPECTRUM FEES IN TERMS OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)

The Independent Communications Authority of South Africa hereby amends the Radio Frequency Spectrum Regulations, 2015 (Notice No. 279 of 2015) to the extent reflected in the schedule.

The amendments are intended to correct numbering inconsistencies.

A handwritten signature in black ink, appearing to be 'SS MNCUBE', written over a horizontal line.

Dr SS MNCUBE
CHAIRPERSON

**AMENDMENT OF THE RADIO FREQUENCY SPECTRUM REGULATIONS, 2015 IN
TERMS OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF
2005)**

The Independent Communications Authority of South Africa has, under sections 4(1) read with sections 31(4), 34(7) (c) (iii), 34(8) and 34(16) of the Electronic of the Electronic Communications Act, 2005 (Act No. 36 of 2005), made the regulations in the schedule.

SCHEDULE

1. Definitions

In these regulations “the Regulations” means the regulations published by Government Notice No. 279 of 2015.

2. Substitution of regulation 15 of the Regulations

The following regulation is hereby substituted for regulation 15 of the Regulations:

“15. Permission to Assign, Cede or Transfer of Control of a Radio Frequency Spectrum Licence

- (1) No licensee must assign, cede or transfer control of a radio frequency spectrum licence without the prior written approval of the Authority.
- (2) An application to assign, cede or transfer of control of a licence must be:
 - (a) in the format as set out in **Form B**;
 - (b) accompanied by the prescribed fee; and
 - (c) submitted by the prospective transferor.
- (3) The applicant for the assignment, ceding or transfer of control of a radio frequency spectrum licence that was or would have been subject to an extended application procedure in terms of Annexure E, must provide information as set out **Annexure E**.
- (4) The Authority will take the following steps with regard to an application for assignment, ceding or transfer of control of a radio frequency spectrum licence that was or would have been subject to an extended application procedure:

- (a) publish a notice in the *Gazette* of the application to assign, cede or transfer control of the licence;
 - (b) request any relevant information regarding the transaction to enable the consideration of the application;
 - (c) invite interested persons to submit written representations in relation to the application within the period specified in the notice;
 - (d) allow the applicant an opportunity to submit written responses to representations received in relation to the application within the period specified by the Authority; and
 - (e) may conduct a public hearing in relation to the application.
- (5) A radio frequency spectrum licence transfer application will be evaluated on the basis of the following criteria:
- (a) technical efficiency;
 - (b) functional efficiency;
 - (c) promotion of competition and interests of consumers;
 - (d) equity ownership and control by HDP's; and
 - (e) economic efficiency.
- (6) In the case where an extended application procedure is applicable, the applicant will receive a total score based upon the sum of the technical, functional and economic efficiencies as outlined in item 20 of the extended application procedure (**Annexure E**).
- (7) When applying for the assignment, ceding or transfer of control of a radio frequency spectrum licence, both the transferor and transferee must ensure that the following conditions are met:
- (a) except where the radio frequency spectrum licence was issued according to the Standard Procedure found in **Annexure D**, the radio frequency spectrum licence must have been held for at least one year before an application for a transfer can be made;
 - (b) the transferee is capable of complying with the terms and conditions contained in the radio frequency spectrum licence;
 - (c) a duly completed application form is submitted by the transferor, with proof of payment of the prescribed application fee at any office of the Authority;
 - (d) in the case of liquidation or insolvency of the transferor, the liquidator/curator must give written consent in respect of the transfer;
 - (e) in the case of a deceased estate, the executor of the deceased estate must give written consent in respect of the transfer; and
 - (f) the transferee for the assignment, ceding or transfer of control of the radio frequency spectrum licence that was subject to an extended application procedure, must have a score not less than that of the transferor.
- (8) The Authority will not approve the assignment, ceding or transfer of control of a radio frequency spectrum licence:
- (a) where a licensee has been found, by the Complaints and Compliance Committee ("the CCC"), to have contravened the provisions of the Act, the

ICASA Act, the Regulations, the Terms and Conditions of a radio frequency spectrum licence or a licence granted in terms of Chapter 3 of the Act, and has failed to comply with an order by the Authority in terms of section 17E(4) of the ICASA Act;

- (b) if such transaction will not promote competition; or
- (c) if such transfer will result in the reduction of equity ownership held by HDP to be less than 30% or the reduction of the BBBEE status of a licensee to below Level 4 contributor or below the level which the transferor is already at.”

3. Short Title and Commencement

These Regulations are called the Radio Frequency Spectrum Amendment Regulations, 2015 and will come into force upon publication in the Government Gazette.
