



**WRITTEN COMMENTS ON THE INFORMATION MEMORANDUM
FOR RADIO FREQUENCY SPECTRUM PROSPECTIVE
LICENCE TO PROVIDE MOBILE BROADBAND AND
WIRELESS ACCESS SERVICES FOR URBAN AND RURAL
AREAS USING THE COMPLIMENTARY BANDS 700 MHz, 800
MHz and 2.6 GHz**

16 October 2015

SENTECH SOC Ltd Reg no: 1990/001791/30

Directors:

Mr. M Mello (Chairperson), Ms. RC Rasikhinya CA (SA) (Acting CEO), Mr. O Nekhavambe CA (SA) (Acting CFO)
Mr. K Matabane (COO), Ms. X Daku, Ms. J Huntley, Ms. Z Mbele CA (SA), Mr. L Mtimde, Mr. S Radebe CA (SA)

Company Secretary:

Ms. F Sefara

1. EXECUTIVE SUMMARY

- 1.1 SENTECH thanks ICASA for the opportunity to make written comments on the Information Memorandum For Radio Frequency Spectrum Prospective Licence To Provide Mobile Broadband And Wireless Access Services For Urban And Rural Areas Using The Complimentary Bands 700 MHz, 800 MHz and 2.6 GHz (“Memorandum”).
- 1.2 SENTECH requests the Regulator to withdraw the Memorandum in its current form as it has no legal status.
- 1.3 SENTECH believes that the Regulator can re-publish the document in a form that is clear in both its legal status and in its intention.
- 1.4 SENTECH is not against the introduction of IMT services in the bands 694 – 790 MHz and 790 – 852 MHz, but the company is concerned about the timing and uncertainty of mitigation measures for the services that are going to be affected.

2. PRINCIPLE MATTER

- 2.1. ICASA has stated that the purpose of the Memorandum is to provide “information to prospective applicants intending to apply for the radio frequency spectrum licenses within the designated range”.
- 2.2. If the purpose of the Memorandum is to provide information, it is not clear why the Regulator is asking for submissions.
- 2.3. It is also not clear what the purpose of the submissions will be.
- 2.4. SENTECH is in agreement that in terms of s4 of the EC Act, as amended, the Regulator is empowered to make regulations in line with s31(3) of the Act.
- 2.5. SENTECH also agrees that the ICASA Act empowers the Regulator to “conduct research”, make regulations and “undertake inquiries”, as outlined in s4 (h), 4(i) and 4(m) of the ICASA Act.
- 2.6. It is clear that the Memorandum is not for the purposes of research or making of regulations or the initiation of an inquiry by the Regulator.
- 2.7. It is therefore not clear to SENTECH which sections of the EC Act and ICASA Act empowers ICASA to initiate a public participation process through an Information Memorandum in the absence of an empowering legislation and/or regulations.
- 2.8. SENTECH seeks clarity from the Regulator regarding the legal status of the Memorandum.
- 2.9. SENTECH acknowledges the Regulator’s reference to existing regulations in the Memorandum.

2.10. It is SENTECH's view that the regulations mentioned in the document do not reference a Memorandum.

3. TERRESTRIAL BROADCAST FREQUENCY PLAN

- 3.1. In November 2009, the Regulator published the Terrestrial Broadcast Frequency Plan 2008 Regulations.
- 3.2. During the public participation process, the Regulator was made aware of the disadvantages of proceeding with a frequency plan that has terrestrial assignments above 790 MHz when taking into consideration the decision supported by South Africa at WRC-07.
- 3.3. The inclusion of terrestrial assignments above 790 MHz, Annexure F, for broadcasting services clearly indicate that the Regulator was well aware that ASO will not yield digital dividend I.
- 3.4. In April 2013 and September 2014, the Terrestrial Broadcast Frequency Plan Regulations were reviewed with both outcomes still including terrestrial assignments above 790 MHz, Annexure G.
- 3.5. Annexure G, is the frequency plan SENTECH's DTT network conforms with.

4. DIGITAL MIGRATION REGULATIONS

- 4.1. Empowered by the Digital Migration Regulations, the Regulator established a Joint Spectrum Advisory Group (JSAG), a "*consultative forum, with the terrestrial television broadcasting service licensees and the electronic communications network service licensees appointed in terms of regulation 9 to perform signal distribution services, to co-ordinate usage of radio frequencies during digital migration*".
- 4.2. The purpose of the Group is to "*promote the efficient co-ordination of frequency spectrum and interference resolution during the dual illumination period*".
- 4.3. A number of representations were made by the participating broadcasting industry entities, including the need for Digital-to-Digital migration in order for both digital dividend I and II to be available.
- 4.4. The following issues were also presented to JSAG;
 - 4.4.1. The need for re-stacking;
 - 4.4.2. The need for funding of the D-to-D migration; and
 - 4.4.3. The impact of migrating Studio-Transmitter-Links on audio services;
- 4.5. Through JSAG, the Regulator was again advised that ASO will not yield any digital dividend.

5. MEMORANDUM

- 5.1. SENTECH is in agreement with the Regulator that the EC Act, particularly s34 (16) empowers ICASA to migrate users on spectrum in compliance with the national radio frequency plan.
- 5.2. SENTECH also acknowledges the exception provisions also included is s34 (16).
- 5.3. As clearly stated by the Regulator in clause 4.5 of the Memorandum, ICASA is required to be mindful when exercising its mandate that its actions are in the best interest of the public.
- 5.4. In ensuring that all interested and affected parties are considered, it is incumbent upon the Regulator to make all relevant and accurate information available regarding digital dividend I and II.
- 5.5. It is unfair and unjust to the broadcasting industry for the Regulator to continue to give the impression that digital dividend I and II will be available nationally at ASO.
- 5.6. Unless the Regulator is implying that all broadcasting services and services ancillary to broadcasting, STLs, will be mandated to switch-off at ASO.
- 5.7. Thus SENTECH believes that this action will not be in the interest of the public as both television and radio services will be lost because the infrastructure in the band 690 – 852 MHz may have to be switched-off.
- 5.8. The Regulator also state that the Memorandum is guided by the NRFP, RFSR and the RFSAP, but nowhere in the document does ICASA acknowledge the Terrestrial Broadcast Frequency Plan (TBFP) and the Digital Migration Regulations (DMR).
- 5.9. This implies that the Regulator is of the view that the NRFP, RFSR and the RFSAP have precedence over TBFP and DMR.
- 5.10. SENTECH would like clarity from the Regulator on the legal framework for regulatory precedence regarding regulations that invariably contradict each other, taking into consideration that the implementation of Annexure J in the TBFP will require policy direction.
- 5.11. Invariably this implies that the enforcement of the RFSR together with the RFSAP equates to the nullification of Annexure G in the TBFP without the proper regulatory procedure.

6. DIGITAL TERRESTRIAL TELEVISION (DTT) OBLIGATIONS

- 6.1. As stated earlier, ASO will not yield digital dividend I and II.
- 6.2. Therefore the principle stated in clause 6.3.1 of the Memorandum is incorrect.
- 6.3. SENTECH is not opposed to the provision of STBs free of charge to non-qualifying households, but the Regulator is required to insist that the STBs must be in compliance with the revised official list of *Regulated Standards for Technical Equipment and Electronic Communications Equipment Regulations*.

7. CONCLUSION

- 7.1. SENTECH thanks ICASA for the opportunity to make written comments on the Memorandum.