



**By email**

**The Independent Communications Authority of South Africa**

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20 May 2022

Dear Sir

**RAIN'S COMMENTS ON THE DRAFT RADIO FREQUENCY ASSIGNMENT PLANS FOR THE IMT700 BAND IN TERMS OF SECTION 4 OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA ACT 13 OF 2000**

**Introduction**

1. On 31 March 2022, the Independent Communications Authority of South Africa (**ICASA**) published the Draft Radio Frequency Assignment Plan for the IMT700 band (the **Draft Assignment Plan**) for consultation through a notice in Government Gazette 46160. The Draft Assignment Plan sets out the requirements for the use of the frequency band 703MHz to 733MHz and 758MHz to 788MHz (IMT700), the channelling plan, implementation provisions, and the procedure for radio frequency coordination, assignment and migration.
2. Rain Proprietary Limited (**rain**) submits its position on the Draft Assignment Plan, particularly in relation to (i) the possibility of ICASA further assigning unused spectrum in the IMT700 band; (ii) the dates for and possible implications of the digital migration process that is currently underway; and (iii) the proposed use of dynamic spectrum sharing in the Draft Assignment Plan.



## The possibility of further assignment of spectrum in the IMT700 band previously set aside for the WOAN

3. In paragraph 8.1 of the Draft Assignment Plan, ICASA states that it has already decided to assign the spectrum in the IMT700 band through an Invitation to Apply (**ITA**). ICASA has recently followed this process in the context of the ITA for International Mobile Telecommunications (IMT) in respect of the Provision of Mobile Broadband Wireless Access Services for Urban and Rural Areas using the Complementary Bands, IMT700, IMT800, IMT2600 AND IMT3500<sup>1</sup> (the **2021 ITA**), which ICASA published on 10 December 2021 and which ultimately resulted in the auction process that was conducted from 10 March 2022 to 17 March 2022 (the **2022 Auction**). In particular, the high-demand IMT spectrum was auctioned off through a two-stage auction process comprising (i) the opt-in round, and (ii) the main stage, which comprised 58 rounds of bidding between the six bidders including rain. Although it is already public knowledge, we briefly set out the events of the Auction as it relates to the IMT700 band specifically:

3.1. *The opt-in round*: On 8 and 9 March 2022, the opt-in round took place following which rain won 2x10MHz in the IMT700 band.

3.2. *The main round*: Vodacom was awarded an additional 2x10MHz in the IMT700 band.

4. rain is, however, aware that in terms of the Composite ITA for an Individual Electronic Communications Network Service Licence and Radio Frequency Spectrum Licence for Wireless Open Access Network<sup>2</sup> (the **2020 WOAN ITA**), 2x10MHz of spectrum in the IMT700 band was set aside for the WOAN.<sup>3</sup> The WOAN ITA was not amended or published afresh following the order handed down by the High Court on 15 September 2021. Although ICASA had, at the time of publishing the 2021 ITA, stated that it would publish a new ITA for the licensing of spectrum for purposes of the WOAN in due course, on 11 March 2022, the Minister of Communications and Digital Technologies (the **Minister**) published the Proposed Policy Amendment on High Demand Spectrum and Licensing of WOAN<sup>4</sup>, which, if adopted, would essentially do away with the WOAN for various policy reasons not relevant to this submission (the **Proposed Amendment Notice**). This would mean that the 2x10MHz in the IMT700 band that was initially set aside for the WOAN would become available for assignment to mobile operators.

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<sup>1</sup> Published in Government Gazette 45628 on 10 December 2021.

<sup>2</sup> Published in Government Gazette 43767 on 2 October 2020.

<sup>3</sup> Page 6 of the 2020 WOAN ITA.

<sup>4</sup> Published in Government Gazette 46031.



5. In this respect, rain submits the following:

5.1. ICASA should license the (unused) spectrum in the IMT700 band pursuant to an ITA process, on substantially similar terms and criteria as set out in the 2021 ITA, and also award the spectrum by way of an auction process. This is because the Radio Frequency Spectrum Regulations, 2015 (the **RFS Regulations**), published under the Electronic Communications Act 36 of 2005, provide that a radio frequency spectrum licence must be awarded on a competitive basis where ICASA determines that there is more demand than spectrum available to accommodate this demand.<sup>5</sup> ICASA has already determined that the spectrum in the IMT700 band is high-demand spectrum. In addition, given that ICASA has already recently awarded spectrum in this band pursuant to the 2021 ITA and the 2022 Auction, this would ensure a consistent approach is followed in respect of any further assignment of spectrum in this band.

5.2. In designing the ITA and the auction process, ICASA should adopt similar pro-competitive measures, as may be relevant and appropriate in respect of such a small portion of spectrum (i.e. 2x10MHz in the IMT700 band), as those implemented in the 2022 Auction. For example, rain recommends that ICASA makes use of spectrum caps when auctioning off the relevant lot of spectrum. rain maintains this position for the simple reason that larger and more dominant operators, that were categorised as Tier-1 operators in the 2021 ITA such as Vodacom and MTN, already had access to more sub-1GHz spectrum than smaller players, such as rain. The Tier-1 operators also had the maximum allowable sub-1GHz spectrum as per the spectrum caps determined by ICASA in the 2021 ITA.

5.3. In the absence of pro-competitive measures such as spectrum caps, it would be open for any operator, regardless of their market share and current spectrum holdings in the IMT700 band in particular, to bid for the entire lot of spectrum in the IMT700 rather than ensuring that an operator who has more need for the spectrum will be awarded the spectrum. A clear example of this is the 2022 Auction where rain and Telkom, both of whom did not previously have any permanent sub-1GHz spectrum holdings, were part of the operators who were deemed eligible to bid for this spectrum in the opt-in round (and were ultimately awarded spectrum in that round). rain therefore proposes that the same formulae used in the 2021 ITA for

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<sup>5</sup> Regulation 7(1) of the RFS Regulations.



determining spectrum caps for the sub-1GHz be used for auctioning the 2x10MHz in the IMT700 band that was initially set aside for the WOAN.

### **The digital migration process currently underway**

#### *Dates to be revised*

6. Paragraph 10.1 of the Draft Assignment Plan states that all broadcasting licences were due to be revoked by ICASA on 1 April 2022, which date has now passed. The licences were not revoked on 1 April 2022 in light of the order handed down by the High Court on 27 March 2022 in terms of which, amongst other things, the Minister's initial deadline to complete the digital migration process by 31 March 2022 was extended by three months to 30 June 2022. rain therefore requests that ICASA amend the Draft Assignment Plan to reflect the revised dates (i) for the digital migration process (as set out in paragraph 9 of the Draft Assignment Plan); and (ii) for the revocation of broadcasting licences in paragraph 10.1 of the Draft Assignment Plan following the end of the transitional arrangements including the digital migration process.

#### *Proportional payments in respect of IMT700 spectrum*

7. Once the Proposed Amendment Notice in respect of the WOAN is finalised and implemented, and once the 2x10MHz of spectrum initially reserved for the WOAN in the IMT700 band becomes available, rain proposes that the spectrum be awarded on a similar basis as sub-1GHz spectrum was awarded in the 2022 Auction. In other words, and as was provided for in paragraph 5.3 to 5.6 of the 2021 ITA, to the extent that the digital migration process is not completed by the deadline (i.e. 30 June 2022), ICASA should continue to license the lot of spectrum in the IMT700 band but consider proportional payments, based on formulae determined by ICASA, for the IMT700 spectrum based on the availability of the spectrum in these bands. Annual fees should be adjusted as the digital migration process progresses.

#### *Spectral efficiency*

8. As outlined further above, and as ICASA knows, rain currently has 2x10MHz of spectrum in the IMT700 band, which it was awarded in the 2022 Auction. As and when the digital migration process progresses, and as and when ICASA licenses any additional spectrum in the IMT700 band, rain submits that it is imperative that its assigned spectrum lots in the IMT700 band (and other bands)



be adjacent to one another such that it would create one contiguous block of spectrum. This will ensure optimal configuration on rain's network and high spectral efficiency. The same principle would apply in respect of any other operator and their respective spectrum assignments and network.

### **Possible misleading use of “Dynamic Spectrum Sharing” as an example of spectrum sharing**

9. In paragraph 5.9 of the Draft Assignment Plan, ICASA encourages mobile network operators to “...share...spectrum, e.g using *Dynamic spectrum Sharing (DSS)* technologies available in LTE and 5G/NR”. DSS is a new antenna technology which enables the use of LTE and 5G in the same frequency spectrum band in parallel (i.e. the use of more than one technology by the same operator on the same spectrum). However, “spectrum sharing” has a specific legal meaning in regulation 18 of the RFS Regulations, which defines spectrum sharing as the instance “...where two or more licensees have been granted radio frequency spectrum licences for all or part of the same frequency assignment”. In terms of regulation 18, licensees are required to make an application to ICASA to use assigned spectrum on a shared basis. rain recommends that ICASA clarify the position in paragraph 5.9 and, in particular, to clarify that DSS is not a form of spectrum sharing as it is defined and understood in the context of the current regulatory framework (even though DSS is loosely termed as a form of spectrum sharing).

### **Conclusion**

rain is grateful to ICASA for the opportunity to make these submissions and hopes that ICASA will consider these submissions when finalising the Draft Assignment Plan.

Yours faithfully

### **Rain Proprietary Limited**

Joe Kgamedi  
Chief Regulatory Officer