

NOTICE 185 OF 2011

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA



RADIO FREQUENCY SPECTRUM REGULATIONS

EXPLANATORY DOCUMENT

REASONS DOCUMENT

1 Introduction

The objects of these Radio Frequency Spectrum Regulations are as follows:

- (1) To establish Radio Frequency Spectrum Regulations that are compliant with the Electronic Communications Act, 2005 (Act No. 36 of 2005) and cover as wide a range of issues as possible under a single legislative instrument.
- (2) To repeal and substitute a range of regulations promulgated under previous legislative or statutory frameworks including the now repealed Telecommunications Act, 1996 (Act No. 103 of 1996).
- (3) To incorporate the High Demand Regulations and Licence Exempt Regulations into a single body of regulations.
- (4) To act as an umbrella set of Radio Frequency Spectrum regulations that is in principle applicable to all areas of the radio frequency spectrum and to all types of licensed services.

2 General Principles

- (1) These regulations as a general rule are applicable to all frequency bands. Regulations for certain services that were covered in the radio regulations have been included as these are relatively stable and affect a large number of small individual licensees.
- (2) Additional rules that are applicable to specific services or frequency bands will be covered in specific regulations contained within Invitations to Apply, or individual licences.
- (3) These regulations accordingly allow the Authority considerable freedom or leeway to promote advanced uses of the spectrum in future regulations including Invitations to Apply.
- (4) While there is no requirement that the regulations for Radio Frequency Spectrum Licences be according to the same format as the Service Licences, the same grouping of topics is adopted as far as possible.
- (5) The term 'licences' in these regulations applies only to radio frequency spectrum licences and assignments. These regulations do not address the 'service licences' (BS, ECNS and ECS licences) which are covered in separate regulations. The radio frequency spectrum regulations are intended to be independent from changes in the service licensing regime.

3 Radio Frequency Spectrum Planning

1. These regulations empower the Authority to develop plans for the use of specific frequency bands services. Part II sets out the process by which a radio frequency spectrum band can be identified as being required for a specific purpose, the

applicable technical parameters defined and the method of assignment determined along with the consultation process.

2. The guiding document is always the **National Radio Frequency Plan** which is typically updated every four years after resolutions have been passed at the World Radio Conference hosted by the ITU.
3. It is envisaged that once the **Radio Frequency Spectrum Band Plan is finalised/reviewed the Authority will** prepare a Radio Frequency Spectrum Assignment Plan for specific bands of radio frequency spectrum.

4. **Radio Frequency Spectrum Assignment Plan**

1. A Radio Frequency Spectrum Assignment Plan will be subject to public consultation, it is envisaged that:
 - (a) the Authority will publish the Radio Frequency Spectrum Assignment Plan in the Government Gazette, and invite interested persons to submit written representations as specified by the notice in the Gazette.
 - (b) the Authority may, after any defined period for lodging comments by interested persons has passed, hold a public hearing in respect of the application.
 - (c) the Authority may modify or vary the Radio Frequency Spectrum Assignment Plan as it deems fit and appropriate.
 - (d) the envisaged **Radio Frequency Spectrum Assignment Plan** will provide more detail than the Radio Frequency Spectrum Band plan including matters as to which service(s) could be offered and proposals as to how the frequency may be assigned. The Radio Frequency Spectrum Assignment Plan aims to depart from the fragmented approach which has characterised spectrum usage in the past. The assignment plan may well propose that the frequency will have to be cleared and reassigned with proposals regarding the movement or migration of existing users into other frequency bands. The consultation on the band plan may have already indicated that demand is going to exceed supply and propose a competitive process. These assignment plans (sometimes termed marketing plans) have a key role as consultation documents.
2. Following on from the assignment plan consultation, the Authority will issue an **Invitation to Apply (ITA)** which prescribes the final set of rules regarding the use of the frequency with instructions on how to apply. The ITA is not necessarily for a competitive process such as an Auction, but when it is, it must set out the rules for the competitive process.
3. HDI Criteria will be incorporated in the ITA.
4. The instrument for assigning the specific frequencies is the ITA. The ITA can specify either a first come first served mechanism or a competition such as an

auction. In this way the high demand regulations are absorbed into these regulations.

5. Given that the assignment plan may well propose that the frequency will have to be cleared and reassigned with proposals regarding the movement or migration of existing users into other frequency bands considerable consultation is envisaged. Users do not have any right of tenure of a frequency, however to cater for all possibilities, supporting regulations on Withdrawal of the Right of Use were initially drafted and subsequently withdrawn in these final regulations

4 Radio Frequency Spectrum Licence Exemptions

- (1) The existing licence exemption regulations have been incorporated and attached in the Annexure A of the regulations, and there is one change in the 5725 – 5875 MHz band (See Table of frequency spectrum licence exemptions).

5 Standard Terms and Conditions of Radio Frequency Spectrum Licences

- (1) The standard terms and conditions are intended to cover any spectrum licence.
- (2) The regulations on duration and renewal are both an extension of the previous radio regulations and designed to meet the following objectives:
 - i. Be consistent with the Spectrum Pricing Regulations, including the provisions for multi-year licenses.
 - ii. Reduce the burden on users and administration by allowing renewal up to **10** years for those pre-assigned services which include the majority of smaller licences.
 - iii. Where required, an ITA or a licence may indicate a specific maximum period for renewal.
- (3) It must be stressed that in most cases, a 'fresh' application for the frequency will be approved and any exceptions to this will be the result of a spectrum planning process as mentioned above.
- (4) The initial draft of regulations on transfer and leasing / third party authorisations made it possible for the Authority to introduce flexible spectrum management methods in the future through an ITA for specific bands. Following the hearings and submissions, it is clear that industry does not entirely support the idea of spectrum trading. The Authority has after considering the different submissions concluded that the possibility of trading for/not for profit is at this stage, regarded as incompatible with the aim of making spectrum available to all groups for the benefit of society as a whole and the need to ensure efficient use of the radio frequency spectrum.

6 Procedures for Radio Frequency Spectrum Licensing and Assignment

- (1) The Standard procedures are intended to be as simple as possible. They are limited to the identity of the applicant/ registrant and where he/she will be locating

transmitters. The standard procedures are intended to apply to the maximum number of categories with the qualification that the Authority can demand that applicant/ registrant submits an extended procedure if required.

- (2) The purpose of the extended procedures is to cover the small number of situations where there is numerous applications for limited spectrum, no radio frequency spectrum band plan or ITA, but an application for spectrum has been made which needs to be thoroughly evaluated in terms of the background and capabilities of the applicant.
- (3) The procedures for applications for frequency in High Demand will be contained in a specific ITA, including the rules that were contained in the repealed High Demand regulations.
- (4) Generally speaking, the application procedures have not changed significantly from the existing practice.

7 Sharing and Co-ordination of Radio Frequency Spectrum Assignments.

- (1) The regulations are intended to ensure that sharing can be maximised and to allow the Authority to introduce innovative technologies and spectrum management approaches.
- (2) The regulations allow the Authority to impose sharing and to demand that the licensees who are sharing an assignment to sort out their internal coordination. This is also an essential component of ensuring the most efficient use is made of spectrum resources.

8 Withdrawal of the Right to Spectrum.

- (1) These regulations sought to enforce the right of the Authority to take spectrum away from existing users in order to allow it to be used for another purpose of greater benefit to society as a whole.
- (2) It was envisaged that these regulations will only be invoked in exceptional circumstances as a last resort and will be subject to consultation. Existing users of the frequency to be so acquired will, where possible, be assigned frequencies in other bands.

9 Radio Regulations for Specific Services

- (1) These are the revised and updated radio regulations for specific services. These services are specified because they are well established, generally stable and applicable to a large number of licensees.
- (2) The regulations for Electronic Communication Equipment Dealers replace those for radio dealers and are contained in these regulations because the equipment in question is generally radio equipment.

10 Revised Draft Radio Frequency Spectrum Regulations

1. Duration of a Radio Frequency Spectrum Licence

In the past and to date, the Authority has not issued multi-year spectrum licences aligned to the service licences. Instead Spectrum licences were aligned to obligations. The matters pertaining to obligations have not been resolved and that process is still underway (Universal Service Committee).

2. Procedure for withdrawal, cancellation or suspension of a radio frequency spectrum licence

3. The Authority is in agreement with the submissions made to the effect that the procedure for withdrawal or cancellation of a radio frequency spectrum licence is adequately catered for in section 31 (8) – (10) of the ECA. **Withdrawal of the right to spectrum**

After considering all the comments or inputs to the draft regulations, the Authority is of the view that it is not practical to focus on instances where rights to spectrum may be withdrawn by the Authority. Many of the concerns raised can be resolved through an amendment process, further aspects relating to instances where the Authority may amend a radio frequency spectrum licence are detailed in section 31(4) of the ECA. The regulation will consequently simply outline the procedure that will be followed by licensees in amending their radio frequency spectrum licences.

4. Section 31 (3): HDI/HDP Criteria

Whilst acknowledging that the minimum threshold provided in the ECA is 30%, the Authority is of the view that the HDI percentage to be imposed on a spectrum licence need not remain fixed and has consequently resolved to stipulate such percentages in an ITA with the aim of balancing the different objects of the Act and promoting the empowerment of historically disadvantaged persons.

5. Transfer of a radio frequency spectrum licence

Spectrum is a national asset and must not be in any way be construed as an asset of a licensee or form part of a balance sheet of a licensee. The Authority will thus discourage any transaction(s) which seek to enable the transferor of a radio frequency spectrum licence to derive a profit from the transfer of the licence. The principle of use it or lose it will be adhered to. Furthermore, the Authority will not approve a transfer if such transfer will reduce or limit competition or HDI/HDP.

6. Electronic Communications Equipment Dealer

Taking into account the submissions in this regard, the Authority is of the view that only a radio apparatus dealer or their agents must be in possession of a radio dealer apparatus certificate issued by the Authority; in other words sales personnel of the radio apparatus dealer or agent are not required to possess the certificate but rather the business institution that deals in radio apparatus must be in a position to produce such certificate.

7. Burglar Alarm Services

The submissions proposed flexibility in term of their coverage range based on their business model. The authority had been making assignments for burglar alarms with a fixed distance of fifty kilometre radius based on recommendations from burglar alarm manufacturers. The fifty (50) kilometre radius is not spectral efficient since this in most cases exceeds the business requirement. There is a limitation in terms of available spectrum for burglar alarms. The twenty (20) kilometre radius, as the minimum, frees up some spectrum which would have not been available had the authority remained fixed to the previously imposed mandatory fifty (50) kilometre radius. The determination of the range required by individual alarm operators will be dictated by their business model and this will be reflected in the application.

ANNEXURES

1. Spectrum Assignment and Coordination procedure.

The spectrum application forms are included in Annexure A. These include procedures for Spectrum Surrender, Spectrum withdrawal, Spectrum amendment, Spectrum coordination and dispute resolution and Spectrum transfer.

2. Amateur modes of emission and the amateur radio frequency bands tables.

The revised radio regulations which have been incorporated in the current regulations omitted the technical aspects of the radio regulations with a view that these are to be reflected in future National Radio Frequency Band Plan. However since the National Radio Frequency Band Plan has a four year cycle, the Amateur table of modes of emission and the radio frequency bands are reflected as Annexure H and I respectively. This to ensure that there is no vacuum created with the repeal of the radio regulations since these are not incorporated in the body of the regulations.
