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Dear Mr Mchunu

Submission to the Independent Communications Authority of South Africa on the Draft Regulations on Spectrum Fees and Radio Frequency Spectrum Regulations.

1. Introduction

ACT is an industry association representing telecommunications network operators across South Africa's ICT sector. ACT welcomes the Authority's initiative to modernise the satellite spectrum regulatory framework and commends ICASA for the constructive engagement it facilitated during the Inquiry initiated in August 2024 (Government Gazette No. 51044). This submission responds to the Draft Amendment of the Radio Frequency Spectrum Fees Regulations, 2010 ("Fees Draft Amendment"), and the Draft Amendment of the Radio Frequency Spectrum Regulations, 2015 ("Spectrum Draft Amendment"), both published in Government Gazette No. 54677 on 15 May 2026 under Notices 3926 and 3927 of 2026 respectively.

ACT's representations are guided by three principles that, in its submission, must inform the finalised regulations:

- Technology neutrality — the framework must not give preference to any access technology platform that directly competes with another, whether satellite or terrestrial, by design.
- Competitive neutrality — fee structures and licensing obligations must not confer a market structural advantage to satellite operators relative to licensed terrestrial operators.
- Proportionate regulation — obligations must be calibrated to risk, spectrum demand, and the capacity of the regulatory framework to enforce compliance.

Each recommendation in this submission advances one or more of these principles. Where ACT identifies legal inconsistency or ambiguity, it proposes a specific amendment to the relevant provision.

PART ONE: DRAFT AMENDMENT OF THE RADIO FREQUENCY SPECTRUM FEES REGULATIONS, 2010

2.1 General Observations

The proposed two-formula structure (1) a Hub Ground Station Fee and (2) a Terminal Network Fee, appears to provide a workable foundation for satellite service fees. However, the fee design has the potential to confer a structural cost advantage to satellite operators or satellite operations, over terrestrial operations. ICASA does not extend to terrestrial operators leniency for spectrum inefficiency, nor does it extend regulatory cost advantages for terrestrial deployments that require larger assignments of spectrum; the principle of competitive neutrality demands equivalent rigour, across technology platforms, to deliver equivalent or similar types of services. Each proposal below must be read against this principle.

2.2 Regulation 2.1 — Definition of "Blanket Licence"

The Fees Draft Amendment inserts a definition of "Blanket Licence" as "an authorisation that covers the operation of a network that connect to an unlimited number of terminals with similar technical and operational characteristics." By referring to an "authorisation," the definition implies a licensing function that belongs in the Spectrum Regulations, not the Fees Regulations. The concept of a blanket licence is entirely absent from the Spectrum Regulations, creating a legal inconsistency between the two instruments and uncertainty as to the scope and source of the licensing obligation.

Fee regulations may not, by implication, confer licensing authority or define the scope of a spectrum authorisation. Licensing concepts belong in the Spectrum Regulations in terms of the Electronic Communications Act 36 of 2005 ("ECA"). The inconsistency, if unresolved, exposes the Authority to challenge on the basis that the Fees Regulations purport to create a licensing category not established by the primary regulatory instrument.

Recommendation:

- Revise the definition of "Blanket Licence" in the Fees Draft Amendment to remove any suggestion that the Fees Regulations are the source of the licensing authorisation.
- Insert a corresponding provision in the Spectrum Regulations that establishes and governs the blanket licensing concept for satellite terminal networks, including the conditions under which individual terminal licensing is required.
- Clarify that where individual ESIM coordination or assignment is required under the ITU Radio Regulations or ICASA-prescribed conditions, the blanket approach does not apply and a separate licence is required.

2.3 Regulation 5(d) — Hub Ground Station Fee Formula

ICASA's proposed amended formula is: **Hub Ground Station Fee = Max (RUL; UNIT × FREQ × BW × SEC).**

The formula omits a Geographic Density Factor (GEO Factor), creating asymmetry with the terrestrial point-to-area formula, which expressly accounts for geographic deployment context. A Gateway Earth Station in Johannesburg imposes materially different interference

risks and spectrum demand than one in the Northern Cape; the current formula treats them identically.

ACT supports the inclusion of the FREQ factor, which appropriately reduces fees for higher-frequency bands (e.g., Ka-band at 0.1) and aligns the formula with terrestrial equivalents. ACT further supports the retention of the minimum fee (RUL) and the SEC factor. The omission of GEO, however, introduces an inconsistency with the terrestrial point-to-area approach. Additionally, the Draft Amendment refers interchangeably to "hub ground station," "principal hub," and "hub gateway" without definitional precision, creating regulatory uncertainty for licensees. ACT is also of the view that ICASA should consider incorporating provision for potential shared use of spectrum vs. exclusive use of spectrum by a Hub Ground Station.

Recommendation:

- Introduce GEO and SHR factors into the Hub Ground Station formula, in line with the approach followed with the terrestrial formula; the revised formula should read: Hub Ground Station Fee = Max (RUL; UNIT × FREQ × BW × GEO × SEC × SHR). Notwithstanding, the application of the GEO factor in respect of classifications of type of areas should not be applied exactly as that of the terrestrial Point-to-Area formula as the interference scenarios and cost to deploy for these systems are vastly different. ICASA should consult on the appropriate classification of areas, threshold and factor values, where deployment in areas below an appropriately defined population density threshold may qualify for a reduction.
- Introduce the SHR factor in line with the approach followed with the terrestrial formula.
- Insert precise definitions for "hub ground station," "principal hub ground station," and "gateway earth station" into Regulation 1 of the Fees Regulations, clearly distinguishing their respective characteristics and fee applicability.

2.4 Regulation 5(e) — Satellite Terminal Network Fee Formula

ICASA's proposed amended formula is: **Terminal Network Fee = UNIT × BW × GEO × SEC**

ACT supports the blanket licensing approach (assuming provisioned via the correct regulatory instrument being the spectrum regulations) for terminal networks, including the extension of the VSAT formula to cover all satellite terminal networks and ESIMs. Two specific concerns require amendment.

Minimum Fee

The existing VSAT formula applied a minimum fee (MIN). Its absence from the Terminal Network formula means that a satellite operator in early deployment, with limited terminals and modest bandwidth utilisation, may pay a de minimis fee bearing no relationship to the cost floor borne by a terrestrial operator with equivalent spectrum. Terrestrial operators pay fees on their full assigned bandwidth from day one, regardless of whether deployment is complete or revenues are being generated.

Recommendation:

Reintroduce a minimum fee (MIN) into the Terminal Network formula, calibrated by reference to the equivalent minimum fee burden borne by terrestrial fixed or mobile

operators holding comparable spectral capacity, ensuring that the fee floor operates as a genuine competitive parity mechanism.

2.5 Regulation 9 — Reference Table

Item 6 of the substituted reference table conflates different satellite infrastructure categories under broad headings and applies the Terminal Network Fee to ESIMs without a separate sub-category. Additionally, Network Control and Monitoring Centres (NCMCs), which are required under Regulation 28A(8) of the Spectrum Draft Amendment, are absent from the fee table.

Recommendation:

- Create a separate sub-category (e.g., Item 6.1(b)) for ESIM terminal networks to accommodate formula differentiation as the technology matures.
- Clarify the category under which NCMC fees are assessed.

PART TWO: DRAFT AMENDMENT OF THE RADIO FREQUENCY SPECTRUM REGULATIONS, 2015

3.1 General Observations

ACT broadly supports the amendments regarding ESIM. However, several provisions contain material ambiguities, inconsistencies, and structural deficiencies that could undermine their effectiveness and generate disputes over regulatory interpretation.

3.2 Regulation 1 — Definitions

3.2.1 "Earth Station in Motion (ESIM)"

The proposed definition omits reference to land vehicle-mounted ESIMs, a growing category for logistics and emergency services, and is therefore under-inclusive.

Recommendation:

Amend the definition to expressly include "Land Mobile Earth Stations" or "Ground Vehicle Earth Stations" as a recognised sub-category alongside ESVs and AES.

3.2.2 "Network Control and Monitoring Centre (NCMC)"

The definition does not specify whether the NCMC must be located within South African territory or whether a foreign NCMC is permissible. This ambiguity has direct implications for enforcement, lawful interception, and ICASA's jurisdictional reach.

Recommendation:

Amend the NCMC definition to specify the permissible location of NCMC facilities. If a foreign NCMC is permitted, ICASA must prescribe the conditions that must be met to ensure that the Authority's regulatory oversight and enforcement capabilities, including the preservation of national security interests, are not materially compromised. Such conditions should specify, at a minimum, whether ICASA will conclude bilateral regulatory cooperation or mutual assistance agreements with the jurisdictions in which foreign NCMCs are located,

and whether the absence of such an agreement would preclude approval of a foreign NCMC."

3.2.3 "Space Segment"

The proposed definition is circular (it uses the word "space" to define "Space Segment"), departs from ITU Radio Regulations terminology, and fails to limit ICASA's regulatory reach to space segment activity directed at or affecting South African territory.

Recommendation:

Replace the current definition with one aligned with ITU terminology and adapted to reflect ICASA's territorial jurisdiction. Clarify that ground earth stations within South Africa form part of the regulated interface between the space segment and South African communications infrastructure. In particular, we recommend that ICASA use a terminology that more accurately reflects the interface i.e. "space-Earth" and "Earth-to-space" segments.

3.3 Regulation 28A — Earth Stations in Motion

3.3.1 Sub-Regulation (6): 90-Day Exemption for Foreign ESIMs

The sub-regulation refers to "90 calendar days" without specifying whether this means 90 consecutive days per visit or 90 days in aggregate per annum. An ESIM entering and exiting South Africa repeatedly in short intervals could, on a narrow reading, be exempt from licensing indefinitely. Additionally, the listed qualifying ITU and ETSI provisions cover Ka-band operations predominantly, leaving Ku-band and other applicable frequency bands without a complete list of qualifying conditions.

Recommendation:

- Amend sub-regulation (6) to prescribe: "...provided they are in the Republic of South Africa for a period not exceeding 30 consecutive calendar days per visit and not more than 120 calendar days in aggregate in any 12-month period."
- Comprehensively review and expand the list of qualifying ITU and ETSI provisions to ensure coverage of all frequency bands applicable to ESIMs as reflected in Annexure K.

3.3.2 Sub-Regulation (7): Foreign ESIM on Aircraft, Ship, or Land Vehicle

Sub-regulation (7) contains the phrase "must require no licensing," which is grammatically and legally incorrect. Furthermore, the sub-regulation does not address the ITU Resolution 902 coordination obligations applicable to ESVs operating within South African territorial waters, creating a potential conflict with the 90-day exemption.

Recommendation:

- Replace "must require no licensing" with "is exempt from separate licensing" or equivalent clear language, read with the 30-day time limitation as recommended above. It is important for ICASA to clarify that any ESIM service expecting to exceed the time limit would result in a mandatory requirement for licensing in advance of the deadline, and mandatory immediate cessation of transmissions should such license have not been acquired by the deadline.

- Insert a proviso preserving the coordination obligations applicable to ESVs operating in South African territorial waters, with reference to the applicable ITU-prescribed distance thresholds (300 km Ku-band; 125 km Ka-band from the low-water mark).

3.3.3 Sub-Regulation (8): NCMC Requirement

Sub-regulation (8) uses the word "authorised" where "licensed" would be legally precise and consistent with the ECA licensing framework.

Recommendation:

Replace "authorised" with "licensed" throughout sub-regulation (8), or alternatively include a definitional provision equating "authorised" with "licensed" for the purposes of Regulation 28A.

3.3.4 Sub-Regulation (9): Reference to the National Radio Frequency Plan

Sub-regulation (9) refers to both "the national table of frequency allocation" and "the National Radio Frequency Plan (NRFP)." The national table is subsumed within the NRFP; referring to both instruments creates uncertainty as to which prevails in the event of inconsistency.

Recommendation:

Amend sub-regulation (9) to delete the reference to "the national table of frequency allocation and/or" and replace it with a sole reference to the National Radio Frequency Plan as the authoritative and comprehensive spectrum management instrument.

3.3.5 New Sub-Regulation: Licensing Threshold for ESIMs Serving South African Users

The Draft Amendment does not expressly establish when an ESIM must be licensed in South Africa. The implicit distinction created by the 90-day exemption and the general licensing requirement leaves a regulatory gap that could be exploited to avoid the licensing and fee obligations applicable to comparable terrestrial and satellite operators.

Recommendation:

Insert a new sub-regulation in Regulation 28A (after sub-regulation (7)) to the following effect: "Notwithstanding sub-regulations (6) and (7), any ESIM operated to provide, facilitate, or support the provision of electronic communications services to persons within the territory of the Republic of South Africa, whether or not on a commercial basis, whether or not the end-user is directly billed, or that transmits within the territory for a period exceeding the exemption thresholds prescribed in sub-regulations (6) and (7), must be licensed by way of a Radio Frequency Spectrum licence issued by the Authority, and the Terminal Network Fee prescribed in the Fees Regulations shall apply." This provision closes the regulatory gap, establishes the licensing obligation clearly within the Spectrum Regulations, and gives legal coherence to the Fees Regulations' Terminal Network Fee.

3.4 Annexure K — Radio Frequency Bands for ESIMs and Applicable Provisions

Annexure K incorporates by reference six European Communications Committee (ECC) Decisions (including ECC/DEC/(05)10, (05)11, (18)04, (19)04, (13)01, and (15)04). These are regional European decisions containing provisions specific to the European regulatory environment, including lists of European radio astronomy sites and coordination mechanisms designed for European administrations. Their wholesale incorporation into South African regulations creates a material risk of importing provisions that are irrelevant, inapplicable, or inconsistent with South Africa's national requirements. In particular, ECC Decision (05)11 lists European radio astronomy sites, whereas South Africa has its own framework under the Astronomy Geographic Advantage Act, 2007 and the Radio Astronomy Protection Levels Regulations. Several frequency bands permissible for ESIM operations under international frameworks are also absent from the Annexure.

Analysis: South Africa is not a member of the CEPT/ECC and is under no obligation to adopt ECC Decisions. The appropriate legal position is therefore submitted to be that South African regulations should be grounded in national requirements, drawing on international best practice as a reference point rather than incorporating regional European instruments wholesale.

Recommendation:

- Replace the wholesale incorporation by reference of ECC Decisions with South Africa-specific provisions for ESIM operations, developed with reference to applicable ITU-R Reports and Recommendations, ETSI standards (where appropriate), and South Africa's own national spectrum management framework.
- Where specific international provisions are suitable for adoption, identify them explicitly and state the extent to which they are incorporated, with any necessary adaptations for the South African context.
- Comprehensively review Annexure K to ensure all applicable ESIM frequency bands, including Ku-band, Ka-band, Q/V-band, and relevant lower bands, are listed with complete, accurate, and South Africa-specific applicable provisions.

3.5 Regulation 28B — Satellite Space Segment

3.5.1 Sub-Regulation (2): Registration and Right to Provide Services

The phrase "does not grant any right to provide services" is ambiguous between (a) providing space segment capacity to a South African-licensed ECS/ECNS licensee, which is a necessary and legitimate commercial arrangement, and (b) directly providing retail electronic communications services to South African end-users without an ECA Chapter 3 licence. Sub-regulation (2) is also silent on the position of operators already providing services to South African licensees at the date of commencement, creating a transitional gap.

Recommendation:

- Amend sub-regulation (2) to clarify that registration does not entitle a space segment operator to provide electronic communications services directly to end-users in South Africa, but does not restrict the supply of space segment capacity to South African ECS or ECNS licensees in accordance with their respective licences.
- Insert a transitional provision requiring existing space segment operators to register within a specified number of days of the commencement of the Amendment Regulations.

3.5.2 Sub-Regulation (3): Coordination with the Astronomy Management Authority (AMA)

ACT supports the protection of the Square Kilometre Array (SKA) and South Africa's radio astronomy assets. However, the current formulation positions the AMA as a de facto gatekeeper for all satellite space-Earth segment operations without prescribing the process, criteria, timelines, or outcomes of coordination.

The sub-regulation does not specify what constitutes "successful coordination," what occurs if agreement cannot be reached, or how outcomes are communicated to ICASA and affected licensees. The SKA protection framework was originally designed to address terrestrial interference, not the interference profile of NGSO mega-constellations, creating regulatory misalignment.

Recommendation:

- ICASA, in consultation with the AMA, must publish within 12 months of commencement: (i) clear criteria for the AMA coordination process; (ii) prescribed timelines; (iii) the standard of "successful coordination" required; and (iv) an appeals mechanism or escalation process to ICASA where coordination cannot be achieved.
- Initiate an urgent review of the SKA and radio astronomy protection regulations to address interference risks posed specifically by NGSO mega-constellation systems, in consultation with the AMA and the sector.
- Confirm if existing satellite systems (even those that do not provide services but radiate over South Africa) are subject to retrospective AMA coordination.

3.5.3 Sub-Regulation (4): Lawful Interception Obligations

Sub-regulation (4) imposes RICA-compliant lawful interception obligations on foreign satellite space segment operators. A foreign operator that has merely registered with ICASA holds no ECA Chapter 3 licence, has no direct regulatory relationship with South African consumers, and may not operate any facility within South Africa. The mechanism by which such an operator can implement RICA-compliant interception without a South African localised gateway is not specified, rendering the obligation potentially unenforceable and shifting the compliance burden to the South African ECS licensee that has contracted with it.

Recommendation:

- Amend sub-regulation (4) to prescribe that: (i) the primary obligation to implement RICA-compliant lawful interception rests on the South African ECS licensee; and (ii) the satellite space segment operator must cooperate with and support the South African licensee in implementing that obligation, including ensuring that traffic is capable of being intercepted and routed in a manner that enables compliance.
- Consider whether there exists potential for local gateway exemptions to be applied in cases of niche or non-mass-market services, as well as the appropriate and effective controls that would need to be applied to prevent abuse of such exemptions. Such exemptions need to ensure that ICASA will be able to have full regulatory oversight including the mechanisms to ensure inter-alia, continued compliance to POPIA, protection of national security interests, local intercept, etc. For such exemptions, it is recommended that ICASA set out the minimum set of technical and regulatory criteria that will need to be fulfilled by exemption applicants seeking such

waiver. Such exemption(s) that may permit deployment of the gateway in alternative territories, must be restricted to territories with which ICASA has already entered into a binding agreement that ensures it is able to satisfy all its regulatory compliance requirements equivalent to the scenario of the gateway having been deployed within the territory of South Africa.

3.5.4 Sub-Regulation (5): Adjacent Channel Interference at 10.7 GHz

The reference to "the channel adjacent to 10.7 GHz" is technically imprecise. The relevant protected passive band is 10.68–10.7 GHz, governed by ITU Radio Regulation No. 5.340 (which prohibits all emissions in that band). The current formulation does not align with ITU definitions and may create uncertainty in application.

Recommendation:

Replace "in the channel adjacent to 10.7 GHz" with "in the band 10.68–10.7GHz, in compliance with ITU Radio Regulation No. 5.340 and in accordance with ITU Recommendation ITU-R RA.769-2."

3.5.5 Sub-Regulation (6): Radio Astronomy Protection

The sub-regulation is grammatically incomplete. It also applies ITU Recommendation ITU-R RA.769-2 and the Radio Astronomy Protection Levels Regulations (R.90 of 2012), both of which were designed to address terrestrial, not satellite, interference to radio astronomy. Mitigation strategies for NGSO constellations are technically distinct and require satellite-appropriate regulation.

Recommendation:

- Correct the grammatical incompleteness of sub-regulation (6).
- ICASA, in consultation with the AMA, should develop satellite-specific radio astronomy protection measures addressing the unique interference characteristics of NGSO systems and GSO networks, particularly in respect of the SKA frequency bands (notably 11 GHz and 20 GHz), including dynamic beam steering, transmission muting, and frequency exclusion zones.
- Publish technical guidelines specifying applicable satellite mitigation standards in consultation with the AMA.

3.5.6 Regulation 42 — Penalties for Non-Compliance

The R5,000,000 fine inserted by sub-regulation (9) for contraventions of Regulation 28B(3)–(6) raises enforceability concerns. A foreign satellite space segment operator that has merely registered with ICASA may have no physical presence, assets, or other regulatory footprint in South Africa against which a penalty can practically be enforced.

Recommendation:

- Publish enforcement guidelines specifying how ICASA intends to exercise jurisdiction over foreign space-earth segment operators and how compliance will be enforced.
- Explore whether the enforcement framework can be enhanced through bilateral or multilateral regulatory cooperation arrangements, including within the SADC framework.

PART THREE: CROSS-CUTTING ISSUES

4.1 Regulatory Coherence Between the Two Draft Amendments

Several issues identified in this submission arise from the lack of cross-referencing and definitional alignment between the two Draft Amendments. ACT recommends that ICASA undertake a regulatory alignment review as part of the finalisation process to ensure that terminology, licensing concepts, and procedural requirements are consistent across both instruments. This review should specifically address the blanket licence concept, the NCMC definition, the ESIM licensing threshold, and the fee table categories.

4.2 Level Playing Field Across Technology Platforms

The introduction of satellite services as a new competitive layer in South Africa's electronic communications market is broadly welcomed. Competition should, however, occur on the merits of technology and commercial offering, not as a result of asymmetric regulatory treatment. ACT calls on ICASA to explicitly adopt the principle of competitive neutrality in finalising both regulations.

4.3 Evolving Regulatory Alignment

The satellite regulatory landscape is evolving rapidly. WRC-27 is expected to address, among other matters, the expansion of ESIM frequency bands, direct-to-device satellite-to-mobile services, and the management of NGSO mega-constellation orbital congestion. ACT strongly recommends that ICASA build a structured review mechanism into both regulations, aligned with the WRC cycle, to ensure that South Africa's regulatory framework keeps pace with international developments.

5. Conclusion

ACT supports the Authority's objective of modernising South Africa's satellite regulatory framework. Achieving that objective, however, requires a framework that is technologically neutral, competitively balanced, legally certain, and practically enforceable. The recommendations contained in this submission are intended to assist the Authority in achieving those objectives while ensuring that satellite and terrestrial operators compete on a level regulatory playing field.

ACT respectfully requests the opportunity to make oral representations should the Authority elect to hold public hearings pursuant to these draft regulations.

Yours sincerely,



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