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Mr Manyapelo Richard Makgotlho
Project Leader
ICASA
Private Bag X10002
Sandton
2146

Cell C Limited
Waterfall Campus
Cnr Maxwell Drive and Pretoria Main Road
Buccleuch, Ext 10, 2090
Private Bag X36, Benmore, 2010
Johannesburg, South Africa
General Tel: +27 (0)84 174 4000
Fax: +27 (0)84 167 6598
Website: www.cellc.co.za
Reg. no: 1999/007722/06

By email: makgotlho@icasa.org.za
Chairperson@icasa.org.za

Dear Sirs

Re: Cell C submission in response to ICASA's Second Draft Radio Frequency Spectrum Plan for Band 825 to 830 MHz paired with 870 to 875 MHz Regulations in *Government Gazette 41082* (IMT850)

1. Cell C would like to thank ICASA for the opportunity to provide written comments on the Second Draft Radio Frequency Spectrum Plan for Band 825 to 830 MHz paired with 870 to 875 MHz Regulations in *Government Gazette 41082* ("IMT850") published on 1 September 2017 ("the Regulations").
2. Cell C supports and recommends the alignment of this second draft Radio Frequency Assignment Plan with the resolutions as adopted at various international, regional and national levels (ITU, ATU and SADC). This means the same spectrum bands are used country to country, which allows the same equipment, including mobile devices, to be sold across large regions, bringing down the cost while also reducing interference and enabling international roaming. This is likely to enable licensees to achieve economies of scale in terms of the acquisition of subscriber equipment whilst keeping cross-border radio frequency spectrum interference disputes to a minimum.
3. Cell C looks forward to engaging with ICASA should ICASA have any queries on Cell C's written submission.
4. Cell C confirms its readiness to participate in any subsequent consultations and oral hearings that might be called by ICASA.

Yours sincerely

Graham Mackinnon
Chief Legal Officer

Cell C submission to ICASA's Second Draft Radio Frequency Spectrum Plan for Band 825 to 830 MHz paired with 870 to 875 MHz regulations

Having regard to the provisions of section 2 of the ECA (Objects) and the provisions of regulation 2(1) of the Radio Frequency Spectrum Regulations, 2015, Cell C has considered the proposed revised assignment plan, and sets out its comments below.

1. Preparation of a Radio Frequency Spectrum Assignment Plan

- a) In terms of the ICASA 2013 Frequency Migration Plan Regulations ("FMP"), regulation 5, "Preparation of a Radio Frequency Spectrum Assignment Plans ("RFSAP")", states that:

"(1) A change in the use of a radio frequency band(s) must be initiated through a Radio Frequency Spectrum Assignment Plan for the radio frequency spectrum bands in the manner specified in the latest Radio Frequency Spectrum Regulations.

(2) With respect to the radio frequency migration process, a Radio Frequency Assignment Plan may include:

(a) The process for migrating existing users and uses from their existing spectrum location, specifying the bands to which the users and uses will be migrated - including in-band migration where applicable.

(b) The period for the reallocation of the radio frequency band in question, specifying the date at which the users to be migrated should cease transmission.

(3) A Radio Frequency Spectrum Assignment Plan shall be subject to public consultation:

(a) The Authority shall publish the Radio Frequency Spectrum Assignment Plan in the Government Gazette, and invite interested persons to submit written representations as specified.

(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."

- b) Therefore prior to finalizing the IMT 850 RFSAP, Cell C recommends that ICASA ensures that the processes listed above are followed and concluded. We say this because the Regulations include many milestones that do not have specific timelines for the affected users or are dependent on other timelines. For the IMT 850 band to be totally cleared, existing broadcasting licensees must be migrated to their appropriate bands, thereafter Neotel/GSM-R must complete an in-band migration and finally Neotel should permanently vacate IMT 850 Band – we are aware that this has been ICASA's intention for some years.
- c) To avoid unnecessary delays and ambiguity, Cell C recommends that each milestone be accompanied with a due date and indication in detail what steps are likely to be required to meet those timelines. We suggest that the process and expectations in relation to migration be clearly set out as an introductory section to the Regulations to avoid unnecessary delays and disputes.

2. Reasons Document

- a) Cell C notes that ICASA had consulted on the migration of certain licensees out of the bands under consideration prior to finalising the 2014 IMT Roadmap Regulations and 2015 Radio Frequency Spectrum Assignment Plans Regulations. However the RFSAP for IMT 850 was never finalised and was deferred until further notice as recorded in *Government Gazette* 38640 on 30 March 2015. No supporting information or a reasons document was provided for this determination.
- b) Cell C recommends that ICASA publish a reasons document for its decision to defer the finalisation RFSAP for over two years and believes this will greatly assist in providing informed comments to this process.

3. Assignment Process

- a) Cell C notes that ICASA will publish an Invitation to Apply ("ITA") process for the allocation of new assignments irrespective of current occupancy. Cell C is concerned that the ITA could take place upon the publication of the Regulation, in terms of sub-regulation 6(1). Cell C believes that this was not the intention of ICASA and could have been an oversight. Therefore Cell C recommends as stated above under "Preparation of a Radio Frequency Spectrum Assignment Plan" that specific timelines are attached to each milestone in the Regulations thus providing regulatory certainty, prior to the ITA being issued.
- b) Cell C also strongly recommends that any regulations, specifically the framework and issuing of an ITA for spectrum in demand be held in abeyance upon such time the policy direction/s for the award of high demand spectrum are published by the Minister of Telecommunications and Postal Services, as required under the ECA. This is because it may be sensible to aggregate the award of or make available other bands in one ITA process for the greatest efficiency and optimal returns, and also because the Minister retains the prerogative to approve the national plan and any amendments to that plan under section 34(2), (10) and (11) of the ECA.

4. Migrating Licensees

- a) In migrating users out of band or completing an in-band migration identified for potential future IMT services, it is imperative that ICASA ensures the objective to promote competition within the ICT sector as contained in Section 2 of the ECA read with Chapter 5 are observed at all times. Licensees who are required to migrate or complete an in-band migration should not unfairly benefit from the migration requirement by acquiring valuable radio frequency spectrum that is considered high demand spectrum pursuant to the migration (as was anticipated in the ICASA 2011 ITA process). An allocation on migration should take account of previous use of that band and future needs, having regard to all the possible and alternative allocations.
- b) At the same time, Cell C is concerned that current occupants of certain bands should not be able to retain those allocations and also participate in any ITA for additional bands, as



this would confer disproportionate benefits on those parties by affording them access to additional scarce resources.

- c) Cell C recommends that the Minister of Telecommunications and Postal Services should be consulted on the migration of existing governmental entities or organizations as users of the spectrum in terms of a migration plan, under section 34(16) of the ECA Act. Cell C recommends that due process must be followed. It is unclear from the Regulations that this process has commenced and been completed.

5. Compensation for Migration

Cell C recommends that any compensation for migration should be clearly explained as to whether it will take place at all and in what form – and as we say above, we do not believe that high value spectrum should form part of any migration compensation which does not involve migration off high value spectrum. Furthermore ICASA must clearly indicate how licensees may be compensated if they stand to lose valuable spectrum after the completion of an in-band migration.

6. Interference

- a) ICASA's role is to approve a clear and unambiguous migration framework which must consist of the following: strict timelines, co-ordination activities, communication plans, escalation process, disaster management process, a fall-back process and dedicated project team. Cell C therefore recommends that ICASA publish an action plan and timetable for greater transparency after necessary investigation into possible interference that has taken place, so that licensees or applicants for spectrum can begin business-planning and technical-planning with a greater degree of certainty; and ensure a fall-back option is in place.
- b) Cell C's 900 MHz assignment is non-contiguous and as follows:

925.2-934.6 MHz paired with 880.2-889.6MHz (9.6 MHz) and 949.2-950.4MHz paired with 904.2-905.4 MHz (1.4MHz), which is a total of 11MHz.

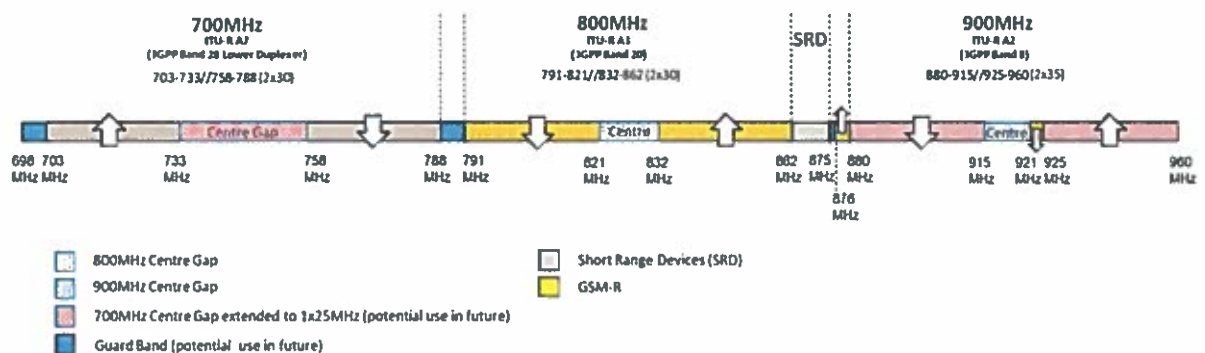
Because Cell C is the only licensee at the edge of the 900MHz band, it is (and always has been) most susceptible to radio frequency spectrum interference from the 800MHz and 850MHz Bands. Cell C has in the past experienced radio frequency spectrum interference from Neotel transmission equipment in particular which severely hampered Cell C's ability to deliver good quality electronic communication services. To mitigate against this interference, Cell C has, at its own expense, installed special high cost filters on Cell C sites to reduce the impact of the current Neotel CDMA850 interference.

- c) The interim in-band migration by 2MHz by Neotel will result in less radio frequency spectrum interference to Cell C equipment. However anyone transmitting in the range (832-852MHz) will also impact Cell C. This is because Cell C is closest to the 800MHz range in the form of 3rd order harmonic which will interfere with the frequencies between 893MHz to 915MHz.

- d) Therefore Cell C requests that it be consulted where technical planning is concerned in both of these areas to avoid any unintended consequences or further prejudice to Cell C.

7. Certainty on the Channelling arrangements for 700MHz and 800 MHz bands

- a) Cell C understands that the proposed SADC channelling arrangements for the 700MHz and 800MHz bands are as follows which also aligns with the African Union Commission proposals:



- b) The above also aligns with the ICASA IMT 700 and IMT 800 RFSAP's published in *Government Gazette* 38640 on 30 March 2015. Cell C recognises the advantages of this approach. Globally and regionally harmonized spectrum and channelling arrangements are desirable. A reduced number of globally harmonized frequency channelling arrangements will reduce the overall cost of networks and terminals by providing economies of scale, and facilitating deployment, and cross-border coordination.
- c) Cell C therefore seeks clarity from ICASA if it is ICASA's intention through this process to align the IMT 850 band with the SADC proposals and the possible timelines thereof.