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Mr Manyapelo Richard Makgotlho

Project leader: ICASA DRAFT NRFP 2021
Pinmill Farm Block A
164 Katherine Street
Sandown

CELL C LIMITED

Waterfall Campus
Cnr Maxwell Drive and Pretoria Main Road
Buccleuch, Ext 10, 2090

Private Bag X36, Benmore, 2010
Johannesburg, South Africa

T +27 (0)84 174 4000

F +27 (0)84 167 6598

W www.cellc.co.za

Registration Number: 1999/007722/06

Per Email: rmakgotlho@icasa.org.za
chairperson@icasa.org.za
Pzimri@icasa.org.za

Dear Mr Makgotlho

RE: DRAFT UPDATE OF THE NATIONAL RADIO FREQUENCY PLAN 2021

1. We wish to thank the Authority for the opportunity to provide written comments on the proposed draft regulations on the update of the National Radio Frequency Plan as published in *Government Gazette 44803* dated 9 July 2021.
2. Cell C wishes to make an oral submission when the public hearings are convened.

Yours sincerely

Mr Themba Phiri
Executive Head: Regulatory

**CELL C COMMENTS ON THE DRAFT UPDATE OF THE NATIONAL RADIO
FREQUENCY PLAN 2021**

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1. INTRODUCTION

- 1.1 Cell C would like to thank the Authority for the opportunity to present these written comments, and requests the opportunity to both elaborate on the points below as well as to raise further points via oral submission when public hearings are convened on the matter.
 - 1.2 Cell C commends the Authority on the publication of the proposed regulations on the draft update of the National Radio Frequency Plan 2021 (“**NRFP**”). Cell C supports the intention of the Authority to update the existing 2018 National Radio Frequency Plan as published in *Government Gazette 41650* on 25 May 2018. Cell C understands that the updates are in respect of the decisions taken by 2019 World Radiocommunication Conferences (WRC-19) as contained in the 2020 version of the ITU Radio Regulations edition including agreements taken at regional level including the African Telecommunication Union (ATU) and the Southern African Development Community (SADC) Frequency Allocation Plan (FAP). Our comments are made on this basis.
 - 1.3 Cell C believes that the draft NRFP is all-inclusive and attempts to create an environment where spectrum bands are used for different applications under Primary and Secondary spectrum allocations to ensure that radio frequency spectrum is used in an orderly manner, accommodate technological innovation, benefiting from economies of scale and providing for minimal or no interference between licensees. Cell C welcomes the harmonized approach adopted by the Authority both on an international and regional level. After consultation has taken place, the final NRFP must be transparent and unambiguous and form the basis to any further radio frequency spectrum initiatives that the Authority may pursue thereafter. This will ensure that any available radio frequency spectrum is published to all interested parties on an ongoing basis under a robust regulatory framework.
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2. SPECIFIC COMMENTS

2.1 Spectrum Management Principles

In general, Cell C encourages the Authority to abide by the following spectrum management principles:

- (a) Ensure that the radio frequency spectrum is utilized and managed in a transparent, orderly, efficient and effective manner;
- (b) Ensure procedures are in place to eliminate harmful interference;
- (c) Create an environment for flexibility (adapt to market changes and new technologies), innovation, and rapid introduction of services;
- (d) Ensure economic efficiency where market allocation of spectrum to users, and to uses, that derives higher value from the spectrum resource;
- (e) Be consistent with government policy;
- (f) Promote development and introduction of new spectrum-saving technologies where the cost of such technologies is justified by the value of the spectrum saved; and
- (g) Ensure the harmonization of radio frequency spectrum with international, regional and national requirements and in so doing, conform to international best practise.

In addition, Cell C recommends that the Authority promotes the process for radio frequency spectrum sharing which will ensure that the radio frequency spectrum is used efficiently whilst allowing an innovative and evolving mobile market that accommodates new sustainable business models.

2.2 Radio Frequency Processes

In the period 2018 to date, the Authority has published the following radio frequency spectrum regulations amongst others:

- a) Regulations on the Use of Television White Spaces 2018, *Government Gazette 44373*, date 31 March 2021;
 - b) Radio Frequency Spectrum Assignment Plan for the frequency band 470 to 694 MHz, *Government Gazette 43341*, date 22 May 2020;
 - c) Radio Frequency Spectrum Assignment Plan for the Frequency Band 2500 to 2690 MHz (IMT2600) *Government Gazette 43341*, date 22 May 2020;
 - d) Final International Mobile Telecommunications (IMT) Roadmap 2019 *Government Gazette 42829*, 8 November 2019;
 - e) Final Radio Frequency Migration Plan 2019 *Government Gazette 42337*, 29 March 2019;
 - f) Radio Frequency Spectrum Assignment Plan for the frequency band 1518 to 1525 MHz *Government Gazette 42286*, date 8 March 2019;
 - g) Radio Frequency Spectrum Assignment Plan for the frequency band 440 to 441 MHz *Government Gazette 42230*, 15 February 2019; and
 - h) Radio Frequency Spectrum Assignment Plan for the frequency band 2025 to 2110 MHz paired with 2200 to 2285 MHz *Government Gazette 42230* date 15 February 2019
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It is Cell C's view that due to the many specific requirements contained in the abovementioned regulations and the complexity of the NRFP, there is a huge risk that the Authority may have incorrectly referenced such requirements in the NRFP. Furthermore, there could be new radio frequency bands included in one of the abovementioned regulations but not included in the NRFP.

This complexity and overlap may lead to unintended consequences. The unintended consequences may include a delay in finalizing the NRFP, amending the abovementioned regulations if there has been a change in decision by the Authority and unnecessary litigation causing wasteful expenditure to all parties involved, simply to ensure certainty and remove vagueness or overlapping and possibly contradictory provisions. Therefore, Cell C recommends that the Authority judiciously manage this process when finalising the NRFP and not only attend to the NRFP but also ensure that the multiple regulations are taken into account and amended or replaced as may be appropriate, at the same time.

2.2 Decisions by World Radio Conference 2019 (WRC 19)

Cell C welcomes the Authority's statement that the Authority consulted with the government Department of Communications and Digital Technologies in developing the NRFP. In addition, Cell C acknowledges that the Authority will seek approval from Department of Communications and Digital Technologies prior to finalising the NRFP. However, the Authority has not indicated to what extent it has consulted in relation to the migration of licensees to ensure that the provisions as contemplated in subsection 34(7) of the Electronic Communications Act ("ECA") are met.

In developing the NRFP, the Authority is required to fulfil the following prescribed activities:

"In preparing the national radio frequency plan as contemplated in subsection (4), the Authority must-

- a) take into account the ITU's international spectrum allotments for radio frequency use, in so far as ITU allocations have been adopted or agreed upon by the Republic, and give due regard to the reports of the experts in the field of spectrum or radio frequency planning and to internationally accepted methods for preparing such plans;*
- b) take into account existing uses of the radio frequency spectrum and any radio frequency band plans in existence or in the course of preparation;*
- c) consult with the Minister to-**
 - I. Incorporate the radio frequency spectrum...*
 - II. Take account of ...*
 - III. Co-ordinate a plan for the migration of existing users, as applicable, to make available radio frequency spectrum to satisfy the requirements of subsection (2) and the objects of this Act and of the other related legislation."**

In addition to the existing spectrum bands that have been allocated by ITU World Radio Conference to MOBILE for IMT applications, new bands have been confirmed for MOBILE as

Primary and Secondary allocations after WRC19. Best practise in spectrum assignment and administrative fairness requires the Authority to consult with affected licensees including affected licensees, to ensure a smooth transition from their existing spectrum assignments to new bands identified by the Authority.

It is equally unclear to what extent the Authority has met this requirement as this is prescribed in terms of section 34(16) of the ECA for state-owned companies, which states the following:

“The Authority may, where the national frequency plan identifies radio frequency spectrum that is occupied and requires the migration of users of such radio frequency spectrum to other radio frequency bands, migrate the users to such other bands in accordance with the national radio frequency plan, except where such migration involves governmental entities or organisations, in which case the Authority –

- a) *Must refer the matter to the Minister; and*
- b) *may migrate the users after consultation with the Minister”*

To avoid unnecessary litigation and delays to the implementation of the NRFP, Cell C recommends that the Authority ensures that it follows due process as prescribed by the ECA and the Promotion of Administrative Justice Act, 2000 (“**PAJA**”) in terms of consultation and migrating licensees to new bands. In addition, there may be an instance when the NRFP is finalized and certain bands are set aside exclusively for MOBILE IMT applications, when licensees operating services other than IMT may be declared as operating in these bands unlawfully. In particular, Cell C recommends that the Authority publishes a clear timeframe for when the digital dividend bands will be totally cleared by migrating users and quarterly updates of the progress thereof. Such intervention will provide certainty to the sector.

2.3 Primary Allocations

Cell C seeks clarity from the Authority on how the Authority is going to deal with licensees who are assigned radio frequency spectrum under a Primary arrangement and allocated for FIXED applications, however, at a later point in time the Licensee but then uses the assigned spectrum allocated for MOBILE to provide IMT services.

This occurs when radio frequency bands become more attractive as the allocation changes to applications that are in high demand. For example, the 2.3 Ghz band may have been assigned to a licensee for fixed services under the FIXED allocation but later used for the provision of IMT services.

However due to this band having been identified for IMT services, the licensee then chooses to initially keep the spectrum and later uses this radio frequency spectrum for IMT services (MOBILE – Primary). Whilst licensing is technology-neutral, the international designation of spectrum is critical to uphold to avoid interference, provide certainty and ensure consistency.

Further an entire radio frequency spectrum band may be changed where the old Primary allocation (FIXED) is required to migrate out of the band and replaced by a later ITU recommended service like MOBILE (IMT). This may also be the case where a licensee who has fixed links refuses to migrate these services and then chooses to use the assigned radio frequency spectrum for the later MOBILE IMT service. Cell C believes that if this behaviour is unchecked, it may lead to potential abuse, spectrum assignment for life or unintended

consequences by licensees who are assigned radio frequency spectrum under a Primary allocation but hold on to their assignments to their benefit when an amendment occurs to the NRFP.

This also applies to radio frequency spectrum assigned to licensee on a Secondary basis in some bands. It is unclear what regulatory framework will be followed in future when the band allocation is updated to a new Primary or Secondary allocation through ITU WRC resolutions or regional harmonisation. Therefore, Cell C recommends that the Authority provide certainty in this regard by ensuring that changes in Primary and Secondary allocations in a designated band is followed by due consultation with all interested parties within the prescribed regulatory framework.

2.4 IMT Frequency Bands

Cell C supports the Authority in its inclusion of the IMT bands as identified by Final Acts of the World Radiocommunication Conference WRC 19 in the NRFP. In particular, Cell C supports the following bands identified for IMT 5G: 24.25-27.5 GHz (Res. 242), 37-43.5 GHz (Res. 243), 45.5-47 GHz (Res. 244), 47.2-48.2 GHz (Res. 243) and 66-71 GHz (Res 241) for the deployment of 5G networks in terms of the relevant WRC resolutions. 5G technologies are expected to support applications such as smart homes and buildings, smart cities, 3D video, work and play in the cloud, remote medical services, virtual and augmented reality, and massive machine-to-machine communications for industry automation.

Cell C further believes that the ATU and SADC recommendations will align with these resolutions and will go a long way in contributing to regional harmonization resulting in accessible and affordable IMT services.

3. CONCLUSION

3.1 Cell C supports the updates to the National Radio Frequency Plan which was published in *Government Gazette 44803* on 9 July 2021 with respect to the MOBILE allocations for IMT applications in the designated bands. These updates must be accompanied by and read with the Resolutions and Footnotes as contained in the Final Acts of the World Radiocommunication Conference WRC 19. In this respect, Cell C encourages the Authority to ensure that due process is followed to ensure that the prescribed requirements under 34 of the ECA are met.

3.2 Cell C encourages the Authority to review the NRFP periodically when the need arises. The need may arise from ITU-R Sector recommendations and resolutions, Regional and National requirements and obsolete technologies. The NRFP must also embrace the framework of the ECA and create an environment for technological innovation and economic growth.

3.3 Cell C again commends the Authority for updating the NRFP and encourages the Authority to ensure that the NRFP is the foundation to which all other spectrum regulations are referenced from and contribute to the future IMT Roadmaps and RFAP's.



Cell C further recommends that any current and future radio spectrum migration plans emanating from changes to the NRFP must be accompanied with definitive timelines applicable to the migrating users to provide certainty to the rest of the sector.