



Cell C (Pty) Ltd

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Reg. no: 1999/007722/07

14 June 2013

Attention: Mr M Mchunu
ICASA Spectrum Unit
Block A, Pinmill Farm
164 Katherine Street
Sandton

Dear Sirs

RESPONSE TO GAZETTE 36540 OF 6 JUNE 2013: APPLICATION BY MTN (PTY) LTD FOR ADDITIONAL SPECTRUM

1. Cell C urgently requests an extension of the deadline for submissions in this matter and reserves its right to supplement these reasons in due course if the extension is granted. This is because the application was noted in a Gazette on Friday 6 June and comments sought within five days. This is not procedurally fair or appropriate considering the nature of the application. The Authority commonly affords interested parties a period of no less than twenty-one days to respond to public consultations, particularly when they are of such a significant nature.
2. In any event, Cell C (Pty) Ltd (Cell C) opposes the application by MTN (Pty) Ltd (MTN) for an additional 5MHz of spectrum in the 2100MHz band, which application was noted in the Gazette referred to above. Cell C's grounds of opposition are set out below.
 - a. Spectrum is a scarce and valuable public resource. The award of scarce resources must always be subject to public scrutiny to ensure that it is awarded in a manner that promotes the public interest.



- b. We are not able to determine from the Gazette the basis on which MTN has made its application but it does not appear to have been made in terms of the ECA or the Regulations. As a minimum, the procedure that should have been followed should be as anticipated in the following provisions of the regulatory framework:
- i. Section 31(3) of the ECA requires that the Authority should prescribe procedures and criteria for awarding radio frequency spectrum licences for competing applications or instances where there is insufficient spectrum available to accommodate demand.
 - i. The Radio Frequency Spectrum Regulations of 2012 (Regulations) at Part IV set out the various ways in which a licence may be applied for and the manner in which a licence may be amended.
 - ii. An application to amend a radio frequency licence can also be made under section 31(4) of the ECA. The provisions of section 31(4)(d) then apply.
3. Cell C requests reasons for the Authority's decision to accept MTN's application in this form, and reasons for the Authority's decision set out in the Gazette to the effect that *"Additional 5MHz of TDD spectrum in the 2011MHz band should be issued to MTN, twenty one days after publication of the gazette referred to above"* as it appears to Cell C that the decision to award spectrum to MTN is a foregone conclusion, and therefore administratively unfair.

Cell C awaits your urgent response. Our rights are reserved.

Yours faithfully

A handwritten signature in black ink, appearing to read "Mothibi Ramusi", written over a horizontal line.

Mothibi Glenview Ramusi
Executive Head: Regulatory Affairs