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12 October 2018

Mr. Manyaapelo Richard Makgotlho
Project leader: ICASA
Pinmill Farm Block A
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Per Email: rmakgotlho@icasa.org.za
chairperson@icasa.org.za

Dear Mr. Makgotlho

RE:DRAFT FREQUENCY MIGRATION REGULATION AND RADIO FREQUENCY MIGRATION PLAN 2018

1. We wish to thank the Authority for the opportunity to provide written comments on the proposed draft Frequency Migration Regulations and Radio Frequency Migration Plan as published in *Government Gazette 41854* on 24 August 2018 which comments follow below.

2. Cell C submission are in three parts namely:
    1. INTRODUCTION;
    2. GENRAL COMMMENTS and
    3. CELL C SUPPORT FOR IMT BANDS AND FREQUENCY MIGRATION RESOLUTIONS RESULTING FROM WRC 15 WRT IMT
3. Cell C will make an oral submission when the public hearings are convened.

Yours sincerely

Themba Phiri
Executive Head: Regulatory

1. INTRODUCTION

1.1 Cell C would like to thank the Authority for the opportunity to present these written comments.

1.2 Cell C commends the Authority on the publication of the proposed draft Frequency Migration Plan (**"the Regulations"**). Cell C is in agreement with the Authority that there is an immediate need to migrate services that no longer apply to the existing frequency bands in the Final National Radio Frequency Plan (**"NRFP"**) as published in *Government Gazette 41650* on 25 May 2018. The migration of these services must occur in the appropriate frequency band as identified in the NRFP.

1.3 Cell C encourages the Authority not to use this process to reconsider other matters such as in-band migration of existing services as decided in terms of previous IMT Roadmap 2014 and finalised Radio Frequency Spectrum Assignment Plans (**"RFSAP"**) for IMT as contained in *Government Gazette 38640* on 30 March 2015. This will avoid unnecessary delays on matters already decided upon after extensive consultation with industry. This will ensure that the radio frequency spectrum assignments to different licensees are harmonized and therefore used more efficiently, realizing the fullest potential of the said radio frequency band. To provide certainty, the Authority must indicate in these Regulations that the RSFAP's as finalised under the IMT Roadmap 2014 and in terms of *Government Gazette 38640* are enforce and effective.

1.4 The Authority had embarked on many regulatory milestones such as RFSAPs for the Frequency Migration Plan 2013 and the 2013 NRFP. Thereafter, the Radio Communications Sector (**"ITU-R"**) held the World Radio Conference (**"WRC"**) in early 2015 that resulted in the most recent Radio Regulations. It is therefore important for the Authority to ensure that these proposed Regulations are consistent with the aforementioned regulations. Subsequently the impact the Regulations will have on licensees once the migration is completed. In this regard, Cell C supports the migration proposals as they are in terms of the NRFP which are informed by the WRC Radio regulations as adopted by SADC Frequency allocation Plan (**"SADC FAP"**). This approach ensures South Africa benefits from economies of scale and in an environment where there will be minimal or no cross border radio interference. Furthermore this ensures that equipment is readily available and harmonized services can be provided both across the SADC Region as well as other countries in Region 1.

2. GENERAL COMMENTS

2.1 Complexity of the Migration Process

Cell C believes that the Authority has embarked on a radio frequency migration process that seeks to address the requirements (resolutions) of the 2015 ITU Radio Regulations (Regional), the NRFP, SADC FAP and of national importance outstanding requirements (recommendations) of SABRE 1 and SABRE 2 band plans and both the 2010 and 2013 NRFP's. Therefore it is observed that this radio frequency migration process encompasses several radio frequency milestones that

unavoidably make this process complex and affects many users of the radio frequency spectrum resource.

Considering the above, Cell C recommends that prior to finalization of the draft regulations, a workshop be convened with the affected interested parties. This consultation will assist licensees who are directly affected by this spectrum migration plan understand the impact thereof. The affected licensees will need to plan well in advance in terms of financial, regulated timelines, subscriber awareness, new spectrum fees and equipment readiness to meet the migration requirements.

2.2 Development of the National Radio Frequency Plan, the Radio Frequency Spectrum Assignment Plan and the Radio Frequency Migration Plan

The development of the NRFP, RSAP and the Regulations are overseen by different rulemaking provisions. Therefore there must be no areas of ambiguity or wrongfully placed spectrum activities between the three processes.

In the case of the NRFP, both the Authority and the Minister have different roles with specific requirements prior to the finalization of the NRFP as contemplated in Section 34 of the Electronic Communications Act, No. 36 of 2005 ("**ECA**"). When the Authority develops the NFRP in terms of Section 34(2), amends and update the NRFP in terms of Section 34(5), the NRFP must be approved by the Minister before publication. Therefore it is Cell C's view that if there is any change to the **allocations** in the NRFP, the Minister must approve the amended/updated NRFP prior to publication.

When the Authority prepares the NRFP, it must do so in terms of section 34(7) (c) which states the following:

"*34(7) In preparing the national radio frequency plan…..the Authority must*

(c) consult with the Minister to-

(i) Incorporate the radio frequency spectrum…
(ii) Take account of governments current …
(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.*"

From Subsection 34(7)(c)(iii) above, it is clear that any migration of existing users must be completed in accordance with a NRFP.

The development of a RSAP is not contemplated in the ECA, however, the Authority has in *Government Gazette 34172*, Radio Frequency Spectrum Regulations, section 3, described what RSAP's may consist of, the nature of the assignments, issuing (first come first served or competitive) and granting criteria (exclusive or shared) for spectrum assignments.

The development of Radio Frequency Migration Plan is not contemplated in the ECA, however, the migration of existing users is contemplated in subsection 34(7)(c)(iii) and subsection 34(16) of the said Act. Subsection 34(16) states:

"The Authority may….and requires the migration of the users of such radio frequency spectrum to other radio frequency bands in accordance with the national frequency plan, except where such migration involves governmental entities or organizations, in which case the Authority-

(a) Must refer the matter to the Minister; and
(b) *May migrate the users after consultation with the Minister."*

Cell C supports the migration of existing users to be aligned with the 2010, 2013 and 2015 NRFP's. Cell C does not however support the inclusion of any migration of users or governmental entities/organizations that was not approved by the Minister. Cell C believes that subsection 34(16) must be fulfilled prior to the migration of these users.

2.3 890-942 (RFSAP for IMT 900- Government Gazette 38640-In-band 900 MHz Migration)

The Authority published the RFSAP for IMT 900 in *Government Gazette 38640* which requires Cell C, MTN and Vodacom to complete an in-band migration by 31 March 2020. Cell C strongly supports this regulation because Cell C motivated for the in-band migration as it was and continues to be prejudiced by the non-contiguous assignment in the 900MHz band. Any attempts by other licensees to indicate otherwise where the in-band migration should not take place must be weighed against the prejudice Cell C suffered from the time of its assignment and on competition principles. A licensee has benefitted and continues to benefit from its contiguous assignment in this band. Lastly, Cell C recommends that the Authority plays an overseeing role in the completion of this process. This is to avoid licensees from delaying or obstructing the conclusion of the in-band migration by providing nefarious reasons for their benefit.

2.4 Government Gazette's 40145, 40301 and 40608 - ITA

The Authority published *Government Gazette 40145* on 15 July 2016 inviting written comments on the Invitation to Apply for Radio Frequency Licences to provide Mobile Broadband Wireless Access Services for Urban and Rural areas using complimentary bands 700 MHz, 800MHz, and 2,6GHz ("**ITA**"). Subsequently, the Authority published an amendment to these draft regulations in *Government Gazette 40301* on 23 September 2016. The Minister of the Department of Telecommunications and Postal services ("**the Minister**") including Cell C approached the High Court to have the Authority's decision set aside and the regulations reviewed. The Authority then deferred the "*Timeframe for the award process*" until further notice in *Government Gazette 40608* on 9 February 2017.

On 26 September 2018, the Minister and the Authority issued a statement titled : "*JOINT STATEMENT: Minister Dr. Siyabonga Cwele and the Council of ICASA agree to settle the spectrum court challenge and to initiate the licensing of unallocated high demand spectrum*". In terms of the settlement agreement, the Authority committed to withdraw the ITA and the Minister will also withdraw the legal challenge. Cell C is aware of the Authority officially withdrawing the ITA through *Government Gazette 41965* on 8 October 2018.

The reason for stating the above is that it is observed that the Authority makes several references to this ITA as a Footnote in the Regulations. An example is contained in Footnote 16 of subregulation 4.10.15. Therefore taking into account the withdrawal of the ITA, Cell C recommends that all references to the ITA be removed from the Regulations.

2.5 Awareness Campaign and Impact of Spectrum Fees

Cell C recommends that these draft regulations include an awareness campaign to ensure all affected licensees are made mindful of the impending changes to their spectrum assignments. Cell C further recommends that the impact and applicability on migrating licensees of the Radio Frequency Spectrum Fees regulation as prescribed in *Government Gazette 33495* be analyzed and known in advance of the migration event. This will provide for better planning and financial management by the affected licensees. It should also be made clear who amongst the licensees are responsible for the migration costs and annual fees, either the licensee or the consumer of the service. Cell C supports the position presented by the Authority on the principle that there would be no compensation for the migrating licensees for the costs associated with the migration by the Authority. This is in terms of subregulation 4(5) of the Regulations and subregualtion 3(5) of the 2013 FMP published in *Government Gazette 36335*. Furthermore, high value spectrum should not form part of any migration compensation. Furthermore the Authority must clearly indicate how licensees will be compensated if they stand to lose valuable spectrum after the completion of an in-band migration.

2.6 International Context

Cell C encourages that South Africa fundamentally follows the allocations in the Radio Frequency Plan for Region 1 in the ITU Radio Regulations and the primary driver for a change in use is a change in allocation stemming from a World Radio Conference Resolution. Region 1 includes Europe, it is therefore practical for South Africa to harmonize the way it uses and manages frequency bands with Europe on the grounds that this facilitates coordination and allows South Africa to benefit from potential economies of scale with regard to equipment and international roaming.

In adopting new technologies and concepts, Cell C recommends that the Authority is consistent with ITU recommendations. Cell C supports the view that the terms and definitions used in the draft FMP are consistent with those used in the ITU and NRFP environments.

3. CELL C SUPPORT FOR IMT BANDS AND FREQUENCY MIGRATION RESOLUTIONS RESULTING FROM WRC 15 WRT IMT

Frequency Band (MHz)	WRC	Res. / Rec.	Footnote	Resolution/ Footnote	Cell C Comments
450 – 470	7	224		Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C supports the allocation to IMT as this band is identified for IMT as per WRC-07 (Res. 224). The radio propagation characteristics of the band make it highly sought after for mobile radio systems since it provides coverage ranges of up to about 30 km and some in-building penetration. It is also a band that has been identified across Europe for digital services according to a common spectrum configuration plan. Aligning spectrum between 450 and 470 MHz will expand its social and economic benefits and increase the efficiency of its use, allowing users to gain renewed benefit from assignments in this band. Cell C recommends that the Authority include definitive timeframes, financial impact (fees) and awareness campaign where relevant.
694 – 790	12	232		Use of the frequency band 694-790 MHz by the mobile, except aeronautical mobile, service in	This is in line with WRC 12 resolutions. The proposed allocation is now updated in the NRFP and the IMT 700 RFSAP was published. Cell C strongly supports the allocation for IMT application and migration of

				Region 1 and related studies	users subject to taking into account the ITU –R outcomes from their studies.
790 – 862	12	224		Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	This is in line with WRC 12 resolutions. The proposed allocation is in alignment with the NRFP and the IMT 800 RFSAP was published. Cell C strongly supports the allocation for IMT application and encourages the complete migration of users to ensure the band is cleared for re-assignment.
1 452-1 492	15	223, 750 & 761	5.346	Additional frequency bands identified for International Mobile Telecommunications Compatibility between the Earth exploration-satellite service (passive) and relevant active services Compatibility of International Mobile Telecommunications and broadcasting-satellite service (sound) in the frequency band 1 452-1 492 MHz in Regions 1 and 3	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.

450-455 MHz	15	224	5.286AA	Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
455-456 MHz	15	224	5.286AA	Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
456-459 MHz	15	224	5.286AA	Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
459-460 MHz	15	224	5.286AA	Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.

460-470 MHz	15	224	5.286AA	Frequency bands for the terrestrial component of International Mobile Telecommunications below 1 GHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
862-890 MHz	15	224, 760 & 749	5.317A	The parts of the frequency band 698-960 MHz in Region 2 and the frequency bands 694-790 MHz in Region 1 and 790-960 MHz in Regions 1 and 3 which are allocated to the mobile service on a primary basis are identified for use by administrations wishing to implement International Mobile Telecommunications (IMT)	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1 427-1 429 MHz	15	223	5,341A	Additional frequency bands identified for International Mobile	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing

				Telecommunications	users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1 452-1 492 MHz	15	223, 739, 761	5.346, 5.208B	Additional frequency bands identified for International Mobile Telecommunications Compatibility of International Mobile Telecommunications and broadcasting-satellite service (sound) in the frequency band 1 452-1 492 MHz in Regions 1 and 3	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1 492-1 518 MHz	15	223	5.341A	Additional frequency bands identified for International Mobile Telecommunications	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1 710-1 930 MHz	15	223, 212	5.384A, 5.388	Additional frequency bands identified for International Mobile Telecommunications	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring

				Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	that this IMT band is used more efficiently and effectively.
1885 – 2025/ 2100 - 2200	07	212		Implementation of International Mobile Telecommunications in the bands 1885-2025 MHz and 2110-2200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1 930-1 970 MHz	15	223, 212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1970-1980 MHz	15	223, 212,	5.388	Additional frequency bands identified for International	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking

				Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
1980-2010 MHz	15	223,212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
2010-2025 MHz	15	223,212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.

				Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	
2110-2120 MHz	15	223,212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
2120-2160 MHz	15	223 212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.

2160-2170 MHz	15	223 212	5.388	Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
2170-2200 MHz	15	223 212		Additional frequency bands identified for International Mobile Telecommunications Implementation of International Mobile Telecommunications in the frequency bands 1 885-2 025 MHz and 2 110-2 200 MHz	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
2300 – 2400	12	223		Additional frequency bands identified for IMT	This is in line with WRC 12 resolutions. The proposed allocation is in alignment with the NRFP and the IMT 2300 RFSAP was published. Cell C strongly supports the allocation for IMT application.

3300-3400 MHz	15	223	5.429A, 5.429B	Additional frequency bands identified for International Mobile Telecommunications	Cell C understands that the ITU-R has identified this band as one of the future bands for IMT. However Cell C supports this band for IMT whilst taking into account existing services and where feasible, the migration of existing users to other suitable bands ensuring that this IMT band is used more efficiently and effectively.
3400-3600 MHz	2004		5.430A	The allocation of the frequency band 3 400-3 600 MHz to the mobile, except aeronautical mobile, service is subject to agreement obtained under No. **9.21**.	The proposed allocation is in alignment with the NRFP and the IMT 3500 RFSAP was published. Cell C strongly supports the allocation for IMT application.