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Independent Communications Authority of South Africa
Attention: Mr. Mandla Mchunu – Project Manager
350 Witch-Hazel Ave
Block C, Eco Point Office Park, Eco-Park Estate
Centurion

By Email: RRamendments@icasa.org.za

CC: mmchunu@icasa.org.za

Dear Mr. Mchunu,

SUBMISSIONS ON DRAFT AMENDMENTS TO THE RADIO FREQUENCY SPECTRUM AND RADIO FREQUENCY SPECTRUM FEES REGULATIONS

Introduction

1. Liquid Telecommunications South Africa (Pty) Ltd trading as Liquid Intelligent Technologies ("**LIT**") is a business of Cassava Technologies, a pan-African technology group present in more than 20 countries, mainly in sub-Saharan Africa.

2. LIT has firmly established itself as the leading provider of pan-African digital infrastructure with an extensive fibre broadband network covering over 110,000 km, leveraging its digital network to provide both cloud and cyber security solutions through strategic partnerships with leading global players.

3. LIT is a comprehensive technology solutions group that provides customised digital solutions to public and private sector enterprises and SMEs across the continent.

4. LIT is the holder of both individual electronic communications service and individual electronic communications network service licences, together with a number of radio frequency spectrum licences for the provision of both fixed, mobile and satellite services and accordingly has significant interest in the present matter.

5. LIT welcomes the opportunity to provide its inputs on the Authority's draft amendment of both the Radio Frequency Spectrum Regulations, 2015 (as amended) ("**RFS Regulations**") and the Radio Frequency Spectrum Licence Fee Regulations, 2010 (as amended) ("**Licence Fee Regulations**").

Submissions on proposed amendment of the Radio Frequency Spectrum Regulations, 2015

Regulation 28A - Earth Stations in Motion

6. LIT would welcome the recognition of Earth Stations In Motion ("**ESIM**") by the RFS Regulations and the introduction of a regime for the exemption of qualifying ESIMs from the need for radio frequency spectrum licensing in the manner contemplated by proposed regulations 28A(6) and 28A(7), subject to what LIT considers to be the reasonable conditions otherwise provided for by the proposed regulation 28A as a whole.

7. On a procedural note, LIT suggests that the proposed definition of ESIM be aligned with the intent of proposed regulation 28A(3) through the following modifications "*…including <u>Maritime Earth Stations (M-ESIM),</u> Aircraft Earth Station<u>s</u> <u>(A-ESIM)</u> and Land Earth Stations <u>(L-ESIM)</u>*", which terms should then be applied consistently throughout the proposed amendment of the RFS Regulations.

8. LIT encourages the Authority to create a commercially and legally enabling environment through the development of complementary exemptions in respect of both the underlying electronic communications service ("**ECS**") and electronic communications network service ("**ECNS**") licensing and type approvals that would otherwise be required for the provision of services to the ESIMs contemplated by proposed regulations 28A(6) and 28A(7).

9. The aforementioned ECS, ECNS and type approval exemptions should primarily be structured for the benefit of foreign-flagged aircraft, ship and land mobile vehicle operators that implement qualifying ESIMs in their vehicles rather than for the benefit of satellite operators or their South African partners that would ordinarily be expected to hold ECS and ECNS licences together with the associated type approvals for the provision or retail or wholesale services within South Africa.

10. Section 6 of the Electronic Communications Act, No. 36 of 2005 (as amended) ("**ECA**") empowers the authority to prescribe *inter alia* the "*(a) type of electronic communications services that may be provided; (b) the type of electronic communications networks that may be operated; (c) the type of electronic communications network services that may be provided and (d) radio frequency spectrum that may be used, without a licence*".

11. The Authority is further empowered by sections 31(6)(a) and 31(6)(b) of the ECA to prescribe both the types of radio apparatus and the circumstances in which their use or possession do not require a radio frequency spectrum licence.

12. These broad powers are rounded out by the provisions of section 35(2) of the ECA which empower the Authority to "*prescribe – (a) the types of equipment, electronic communications facilities and radio apparatus, the use of which does not require approval where such equipment, electronic communications facilities and radio apparatus has been approved for use by the European Telecommunications Standards Associations or other competent standards body where the equipment complies with type approval standards prescribed by the Authority; and (b) circumstances under which the use of equipment, electronic communications facilities, radio apparatus and subscriber equipment does not require approval*".

13. A failure by the Authority to support the proposed radio frequency spectrum licence exemption of qualifying ESIMs with concomitant and express service and type approval exemptions risks diminishing (if not entirely negating) the benefit of proposed regulations 28A(6) and 28A(7) and could result in the operators of foreign-flagged aircraft, ship and land mobile vehicles encountering unintentional barriers to their otherwise lawful deployment of ESIMs, such as a need to engage with the requirements of *inter alia* sections 5(8) and 5(8A) of the ECA.

14. While the proposed service and type approval exemption regime is likely capable of being addressed through publication by the Authority of notice in the Government Gazette (rather than through amendment of the Type Approval Regulations, 2013, the successor Equipment Authorisation Regulations, 2021 upon their commencement or the ICASA Licence Exemption Regulations, 2008), proposed regulation 28A should be modified to reflect the service and type approval exemptions that would extend to operators under proposed regulations 28A(6) and 28A(7).

15. To the extent that the phrases "*are exempt from licensing*" and "*must require no licensing*" in proposed regulations 28A(6) and 28A(7) respectively are intended to serve as exemption from the need from both service and radio frequency spectrum licensing and from the need to type approve ESIM devices, it is requested that the Authority revise the current text to provide sufficient clarity as to the intended effect of those provisions.

16. Given the various safeguards proposed by *inter alia* proposed regulations 28A(5) to 28A(10) LIT proposes a relaxation of the 90 calendar day period contemplated in proposed regulations

28A(6) and 28A(7) through inclusion of the phrase "...90 calendar days, <u>or such further reasonable period as may granted by the Authority on good cause shown...</u>".

17. While LIT would welcome the introduction of effective monitoring and control requirement for ESIM platforms, as contemplated by proposed regulation 28A(8), it submits that both those provisions and the definition of "Network control and monitoring centre" ("**NCMC**") stand to undergo further development if the monitoring and control regime is to be workable in practice.

18. The definition of NCMC does not presently include a stipulation that the facility must be located within the territory of the Republic of South Africa or for such other mechanism as would be required to afford the Authority (or any other South African law enforcement or regulatory authorities) the ability to exert jurisdiction over the NCMC's operations.

Regulation 28B – Satellite Space Segment

19. LIT supports both the objectives and scope of the Authority's proposed foreign satellite space segment operator registration requirement as set out in proposed regulation 28B(1).

20. The references to the Regulation of Interception of Communications and Provision of Communication-related information Act, No. 70 of 2002 (as amended) ("**RICA**") and the imposition of a parallel (yet underdeveloped) lawful interception capability obligation on satellite space segment operators by proposed regulation 28B(4) are in LIT's view ill-suited to the RFS Regulations.

21. The development by the Authority of a parallel lawful interception capability obligation risks creating inconsistencies or conflicts with the interception framework already in place under RICA and which it is understood will shortly undergo review by the Department of Justice and Constitutional Development as part of a broader modernisation effort.

22. Proposed regulation 28B(4) does not align with the policy objectives of the ECA and would likely be unworkable in practice as satellite space segment operators may, but would not in all cases, satisfy the requirements of an "electronic communication service provider" as defined in section 1 of RICA with the associated obligations in those cases falling to the local licensees with whom those satellite space segment operator have partnered.

23. There is further a risk that proposed regulation 28B(4) exceeds the Authority's mandate under the ECA and may therefore be subject to review as regulations which are *ultra vires* the ECA.

Submissions on proposed amendment of the Radio Frequency Spectrum Licence Fee Regulations, 2010

24. LIT strongly supports the proposed introduction of a “blanket licence” regime within the context of the satellite terminal network formula and similarly welcomes the Authority’s proposed revisions to the hub ground station fee formula.

25. These measures are likely to contribute positively to domestic satellite service adoption, the development of a domestic ground-based satellite infrastructure and wholesale services market and to overall competition within the South African satellite services market.

26. LIT however notes that while the licensee responsible for the payment of annual radio frequency spectrum licence fees will in some cases be a domestically registered subsidiary or similar vehicle of a foreign satellite space segment operator, those operators do at times enter into commercial arrangements with one or more ECS and ECNS licensees for the operation and management of those ground stations and for the delivery of subscriber services to a network of terminals.

27. The satellite terminal network formula set out in proposed regulation 5(e) does not currently discriminate between single and multiple domestic operator scenarios. This creates a risk that multiple ECS and ECNS licensees may be required to make payment of duplicated annual radio frequency spectrum licence fees in respect of a shared pool of radio frequency spectrum used by a foreign satellite space segment operator for the delivery of services to a given terminal network.

28. Given the increased awareness of the satellite space segment enabled by *inter alia* proposed regulation 28B(1) of the RFS Regulations, LIT submits that the Authority will now in practice be empowered to make the distinction between single and multiple operator scenarios within the terminal network context and to apportion annual radio frequency spectrum licence fees accordingly.

29. Should the Authority share this assessment it is encouraged to introduce a further factor that scales commensurately with the number of concurrent network terminal radio frequency spectrum licensees operating a given terminal network.

CONCLUSION

30. LIT thanks the Authority for its efforts thus far in the development of the draft amendments to the RFS Regulations and the Licence Fees Regulations and appreciates the opportunity to make written submissions.

31. LIT wishes to note its interest in participating in any future inquiries and/or public hearings in relation to the development of the aforementioned amendments.

32. We trust that our submissions will contribute positively and we look forward to further engagement with the Authority on this and future related processes.

Yours faithfully

Valencia Risaba
Chief Legal and Corporate Affairs Officer