MEDIA DEVELOPMENT & DIVERSITY AGENCY

Annexure A - Comments on the Draft Amendments to the Radio Frequency Spectrum Regulations, 2015 and Spectrum Fees Framework

1. INTRODUCTION

The Media Development and Diversity Agency (MDDA) welcomes the opportunity to submit consolidated comments on the Draft Amendments to the Radio Frequency Spectrum Regulations, 2015 and the related spectrum fee framework.

The MDDA supports regulatory modernisation in the electronic communications sector and recognises ICASA's efforts to align South Africa's spectrum governance framework with evolving satellite technologies and international practice.

At the same time, the MDDA emphasises that regulatory reform in this domain must advance broader constitutional and policy objectives, including media diversity, affordability, universal access, and the sustainable participation of community and small commercial broadcasters in the communications ecosystem.

2. OVERARCHING POLICY POSITION

The MDDA views the proposed amendments as more than technical regulatory adjustments. They represent an important expression of national spectrum sovereignty, scientific and regulatory protection, and the principle that emerging technologies must be introduced into the South African market in a manner that advances equitable and inclusive development outcomes.

Accordingly, the MDDA affirms that no operator, regardless of the connectivity benefits they provide, should be exempt from clear, consistent, and enforceable regulatory obligations.

3. OVERVIEW OF KEY AMENDMENTS

The draft amendments introduce three key interventions:

1. A framework for Earth Stations in Motion (ESIMs);
2. A registration process for foreign satellite space segment operators; and
3. A revised spectrum fee structure reflecting increased bandwidth usage.

While these developments are broadly supported, the MDDA submits that implementation must ensure that regulatory modernisation does not inadvertently weaken oversight capacity or dilute developmental and public-interest outcomes.

4. REGULATION 28B(3): COORDINATION WITH MANAGEMENT AUTHORITY

The MDDA supports the intent of Regulation 28B(3), which requires satellite space segment operators to coordinate with the Management Authority to mitigate interference with astronomy-related infrastructure.

However, the provision would benefit from greater legal and procedural certainty.

In its current form, the term “coordinate” does not clearly define:

- applicable timelines for engagement;
- procedural requirements;
- evidentiary standards for compliance; or
- mechanisms for resolution where agreement is not reached.

In the absence of such clarity, there is a risk of inconsistent application and non-binding consultation outcomes.

The MDDA respectfully recommends that consideration be given to strengthening this provision by requiring either:

- a documented agreement between parties; or
- a structured escalation mechanism culminating in a binding determination by the Authority within defined timeframes.

5. REGULATION 28A(8): ESIMS AND NETWORK CONTROL AND MONITORING CENTRES (NCMC)

The MDDA supports the inclusion of regulatory provisions governing Earth Stations in Motion (ESIMs), including the requirement for permanent monitoring and control via a Network Control and Monitoring Centre (NCMC).

However, further clarity regarding governance and jurisdictional requirements would enhance enforceability and regulatory oversight.

In particular, the current drafting does not specify:

- the entity responsible for operating the NCMC;
- whether the NCMC must be located within South Africa; or
- the conditions under which offshore NCMC operations may be permitted.

This creates a potential regulatory oversight gap, particularly where operational control over transmissions affecting South African territory may be exercised from outside the Republic without direct local regulatory access.

The MDDA therefore recommends that the final framework explicitly provide for either:

- localisation of NCMCs within South Africa; or
- clearly defined enforceable obligations ensuring full regulatory access, auditability, and compliance oversight where NCMCs are located offshore.

6. REGULATION 28A(6): 90-DAY EXEMPTION FOR FOREIGN ESIMS

The MDDA acknowledges the inclusion of a 90-day exemption for foreign ESIM operations, which reflects alignment with international practice.

However, several aspects of the provision would benefit from clarification to ensure regulatory certainty and effective oversight.

In particular, the provision does not clearly establish:

- the authority responsible for determining compliance with applicable international instruments;
- notification requirements prior to operation;
- the entity upon which compliance obligations are imposed; or
- the commencement date of the 90-day exemption period.

In addition, the exemption mechanism may operate in practice as a de facto authorisation process without triggering a formal notification or approval structure, which may limit regulatory visibility.

The MDDA respectfully recommends that ICASA consider introducing:

- a lightweight pre-operation notification requirement;
- clear definition of when the exemption period commences; and
- an explicit obligation to obtain authorisation prior to continued operation beyond the exemption period.

7. TRANSFORMATION, EEIPS, AND AFFORDABILITY

The MDDA supports the continued advancement of transformation objectives within the electronic communications sector.

However, the reliance on Equity Equivalent Investment Programmes (EEIPs) as a compliance mechanism introduces potential uncertainty, given the evolving legal and policy context governing their implementation within the sector.

In this regard, the MDDA notes that transformation outcomes are most effective where they are measurable, enforceable, and demonstrably beneficial to historically disadvantaged communities, rather than primarily expressed through financial inputs.

The MDDA further emphasises that affordability is an essential component of meaningful access. Access that is not affordable does not constitute effective access in practice, particularly for community and small commercial broadcasters.

Accordingly, if EEIPs are retained within the regulatory framework, the MDDA submits that they should be supported by:

- clearly defined legal and regulatory parameters;
- measurable and auditable outcome-based obligations; and
- explicit linkages to demonstrable benefits for public-interest communications services and historically disadvantaged communities.

8. PROPOSED PUBLIC-INTEREST MEASURES

To strengthen the developmental impact of the proposed framework, the MDDA respectfully encourages ICASA to consider the following:

- differentiated pricing mechanisms for non-commercial public-interest broadcasters and publishers as part of licensing obligations for satellite operators;
- EEIP commitments that include measurable, auditable allocations directed specifically to community media and the broader public-interest broadcasting ecosystem; and
- exploration of support mechanisms for equipment access or subsidised deployment for community broadcasters, consistent with South Africa’s universal service and access policy objectives.

9. CONCLUSION

The MDDA appreciates ICASA’s efforts to modernise South Africa’s spectrum regulatory framework and supports the proposed amendments in principle.

The intention of this submission is to contribute constructively toward a final regulatory framework that balances innovation with regulatory certainty, and technological advancement with inclusive and sustainable development outcomes.

The MDDA submits that the ultimate objective of the framework should be to ensure not only the expansion of satellite-enabled connectivity, but also the practical realisation of equitable, affordable, and meaningful access across all sectors of South African society.