

Independent Communications Authority of South Africa
350 Witch-Hazel Avenue,
Eco Park, Centurion.

Attention: Mr Manyapelo Richard Makgotlho

By email: rmakgotlho@icasa.org.za

cc: jdikgale@icasa.org.za

3 December 2021

Dear Mr Makgotlho,

**NOTICE ON THE INQUIRY FOR THE IMPLEMENTATION OF THE RADIO
FREQUENCY MIGRATION PLAN AND OF THE INTERNATIONAL MOBILE
TELECOMMUNICATIONS (IMT) ROADMAP**

- 1 On 30 September 2021, the Independent Communications Authority of South Africa ("Authority") published in Government Gazette no 45247, a Notice on the Inquiry for the Implementation of the Radio Frequency Migration Plan and of the International Mobile Telecommunications ("IMT") Roadmap ("the Inquiry") for consultation in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000). The Authority invited stakeholders to raise questions of clarity by 15 October 2021 and to submit written submissions by 3 December 2021.
- 2 The Authority indicated that the purpose of this Inquiry is to determine the current use and usage of the frequency bands as mandated by the Frequency Migration Regulations 2013 in order to develop an

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implementation plan regarding the Radio Frequency Migration Plans, IMT Roadmap and the frequencies identified for migration during the development of the National Frequency Plan of 2018, as well as the implementation plan thereof, through the development and amendment of new and existing Radio Frequency Assignment Plans to achieve global harmonisation of Standards and Systems.

- 3 The National Association of Broadcasters ("NAB") is a leading representative of South Africa's broadcasting industry, representing the interests of all three tiers of broadcasters. Our members include the public broadcaster, commercial and community broadcasters, signal distributors, and associate members.
- 4 The NAB has through its numerous submissions actively participated in the Authority's processes regarding spectrum management and administration to ensure compliance with international regulations as agreed to and adopted by South Africa.
- 5 The NAB understands that this process is guided by the objectives outlined in section 2 of the Electronic Communications Act 36 of 2005 (as amended), which include universal provision of electronic communications networks and electronic communications services, and efficient use of the radio frequency spectrum. We also understand that the Authority seeks to ensure that sufficient radio frequency spectrum is available for broadband and other services in the short term (within 3-5 years).
- 6 This Inquiry is being conducted by way of a questionnaire with two key aspects, i.e., a broad range of frequency bands that might be considered for migration and radio frequency spectrum assignment plans (category 1



bands), and a set of IMT bands and 8 other radiocommunications bands for closer study (category 2 bands).

- 7 Under category 1 bands, stakeholders have been requested to consider the frequency bands and provide comments on whether alternative frequency bands should be considered. In addition, to provide information that may assist the Authority to rank the various frequency bands with respect to its impact on business, consumers or the economy more broadly.
- 8 Under category 2 bands, a list of 22 frequency bands have been listed that *may* be considered for IMT services, facilitation of access to broadband services and bands for migration. This section calls for closer study and submission of confidential commercially sensitive information.
- 9 Members of the NAB will submit individual responses to the questionnaire, these responses are supported by the NAB.

General Concerns

- 10 In considering the questionnaire and the rating system for completion by interested parties, the NAB is concerned with the unintended consequences of such an approach as this may result in the Authority determining the 'value' of specific frequency bands based only on commercial indicators to the exclusion of public interest needs.
- 11 The Authority is respectfully reminded of its obligations to regulate in the public interest and that it has a duty to ensure spectrum remains available for services that cannot claim direct impact on GDP, but that serve needs and contribute to public value in a way that requires greater effort to analyse, than merely to refer to the impact on GDP or costs to operators.



Services that fall into this category may include safety of life services, services that facilitate aviation, maritime and rail services as well as broadcast services, and public protection and disaster recovery services. It seems these critical aspects have been omitted from the aspects ICASA seeks comments on in this inquiry.

- 12 The NAB commends the Authority for delivering on key public interest objectives during the national state of disaster (COVID-19) and it is precisely given this context that the Authority ought to widen its reach (beyond ICASA licensees) for broader input on this important process.
- 13 In underscoring the above concern, the NAB notes that the questionnaire requires respondents to supply information pertaining to “your business”, “your firm” and “how many sites...you deployed” – the Authority does not include reference to Radio Frequency Spectrum to serve non-commercial use. The questionnaire is framed in a manner that excludes the participation of civil society and therefore limits input on the relevance and nature of services delivered (or to be delivered) as a benefit/value to society.
- 14 The NAB respectfully submits that the inquiry in its current format is inadequate and does not solicit all the information required to reach conclusions in the public interest.
- 15 The NAB is also concerned that a comprehensive and independent study on future spectrum requirements that is informed by ITU projections and WRC treaties and agreements has seemingly not been developed. It is therefore challenging for stakeholders to meaningfully contribute to category 2 bands (IMT or other Radiocommunications frequency bands which have not been covered). Furthermore, the NAB is of the view that

the Authority's request for input on best practice on migration, coexistence analysis, maturity of ecosystem as well as international benchmark studies and likely timelines for migration, ought to already be under investigation by the Authority, as the Authority is best placed to engage with global regulators and/or research companies on these issues.

- 16 There is also concern with regard to policy certainty and bands that are still subject to World Radiocommunication 2023 ("WRC'23") preparatory processes as these are currently being considered by national preparatory working groups. It is the NAB's understanding that bands under WRC'23 fall outside of the Authority's scope at this stage and Section 34 of the Electronic Communications Act 36 of 2005 ("the ECA") also spells out the Minister's role with respect to the ITU and international treaties.
- 17 The Authority is also aware that the following radio frequency bands 470 – 960 MHz (Agenda Item 1.5) / 3600 – 3800 MHz (Agenda Items 1.2 and 1.3) / 4800 – 4990 MHz (Agenda Item 1.1) / 6425 – 7125 MHz (Agenda Item 1.2) are currently under discussion as part of WRC'23. The general understanding is that all country positions for WRC'23 are subject to Cabinet approval post Conference Preparatory Meeting 2, 2023 (CPM2-23) and before official submission to WRC'23 for consideration. Taking into consideration that the ITU Task Group 6/1 is yet to agree and let alone undertake compatibility studies for Agenda Item 1.5, it is therefore not clear on what basis the Authority is considering the bands for IMT.
- 18 In terms of section 34(1) of the ECA, the Minister of Communications and Digital Technologies is the country's representative on WRC matters as the conference reviews and revises international treaty governing the global use of the radio-frequency spectrum. The inclusion of bands currently under discussion at the ITU WRC'23 in the Inquiry is beyond the

scope of the Authority. The Authority has no legislative mandate to determine country policy on behalf of Parliament. The Authority must refer to section 231 of the Constitution of the Republic of South Africa, *International agreements*, read together with sections 30(2)(a) and sections 34(1), (2) and (3) of the ECA.

Category 1 Frequency Bands (no's 34 to 37)

- 19 Spectrum allocated in region 1 is for T-DAB broadcasting, although not all countries allocate the full band. This band of frequencies is not under consideration for IMT. The Authority is aware that T-DAB broadcasting has been adopted for broadcasting in South Africa and that ICASA has completed a regulation process for the licensing of T-DAB. The ITA process for the licensing of T-DAB has yet to commence. Therefore, the questions posed Q1 to Q7 cannot be answered, as no one has been licensed to operate T-DAB to date. This band is currently used for analogue TV which will become freed up with the ASO. Some spectrum is allocated in No 34 for possible DTT transmission which is highly unlikely to be ever be used and should be reserved for T-DAB. All T-DAB receivers tune across Nos 34 to lower part of 37 (239.200MHz) as standard. The NAB therefore recommends that all frequencies from numbers 34 to 37 ending at 239.200MHz) be removed from this process.

Regulatory Considerations

- 20 The Authority is required to achieve the objectives set out in Section 30 and Section 34 of the ECA, as amended (spelt out below). In so doing and as creature of statute, the Authority cannot deviate from, or usurp the responsibility of the Minister in exercising his/her duties under Section 34 of the ECA.

- 21 With regard to Section 30, the Authority is required to balance the needs of the public and that of operators/licensees, when considering efficient utilisation of the radio frequency spectrum including allowing shared use of radio frequency spectrum when interference can be eliminated or reduced to acceptable levels. To that end, the Authority will have to determine what the acceptable levels are and these must be in consultation with the parties and ideally with consumers/public as well.
- 22 Furthermore, given the urgency to provide digital electronic communications facilities (as a consequence of the pandemic, COVID-19) the Authority is required to prioritise efficient utilisation of radio frequency spectrum and to provide adequately for future expansion of services. A forward looking, future-proofing exercise is necessary and this inquiry will definitely assist in that regard.

ECA Section 30 - Control of radio frequency spectrum

"30(2)(a) ...The Authority must comply with applicable standards and requirements of the ITU and its Radio Regulations, as agreed to or adopted by the Republic, as well as with the national radio frequency plan contemplated in section 34;

(b)...efficient utilisation of the radio frequency spectrum, including allowing shared use of radio frequency spectrum when interference can be eliminated or reduced to acceptable levels by the Authority...

(c)...priority to applications for radio frequency spectrum where the applicant proposes to utilise digital electronic communications facilities for the provision of broadcasting services, electronic communications services, electronic communications network services."

ECA Section 34 – Radio Frequency Plan

“34(1) The Minister...represents the Republic in international fora, including the ITU, in respect of –

- (a) the international allocation of radio frequency spectrum usage; and*
- (b) the co-ordination and approval of any regional radio frequency spectrum plans applicable to the Republic, in accordance with international treaties and multinational and bilateral agreements entered into by the Republic”*

Conclusion

- 21 The NAB thanks the Authority for the opportunity to make this submission and we look forward to further developments. We trust the Authority will consider the input and responses to the questionnaire by NAB members and all stakeholders.

Yours sincerely



Nadia Bulbulia
Executive Director
National Association of Broadcasters (SA)