To: Independent Communications Authority of South Africa
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SAKELIGA'S WRITTEN REPRESENTATIONS ON THE DRAFT AMENDMENTS TO THE RADIO FREQUENCY SPECTRUM REGULATIONS, 2015 AND RADIO FREQUENCY SPECTRUM FEES REGULATIONS, 2010

INTRODUCTION

1. Sakeliga NPC ("Sakeliga") is a not-for-profit business group and public benefit organisation with supporters in various enterprises across South Africa. Sakeliga is an independent business community that promotes a healthy and favourable business environment in the public interest. Sakeliga is a staunch advocate for a free-market, regulatory legality and the removal of artificial barriers to enterprise formation and investment.

2. Sakeliga submits these comments in response to ICASA's draft amendments to the *Radio Frequency Spectrum Regulations, 2015* ("draft RFS amendments") and the associated draft amendments to the *Radio Frequency Spectrum Fees Regulations, 2010* ("draft RFS Fees amendments"), as published in the Government Gazette Notices 3927 and 3926 of 2026, Government Gazette No. 54677 on 15 May 2026.

3. These written representations should not be construed as a full and final expression of Sakeliga's position on the draft amendments or on the subject matter addressed herein. Sakeliga reserves the right to amend, supplement and/or append to these submissions at any future stage.

4. A modern, transparent and workable framework for satellite services in South Africa is long overdue. Regulation that blocks or deters efficient satellite market entry imposes a real cost on enterprise, employment, rural development and South Africa's global competitiveness. Although the draft amendments ostensibly seek to remove certain unnecessary barriers, they cannot achieve their intended purpose unless the remaining legal barriers to market entry created by the existing licensing framework are also resolved.

GENERAL SUPPORTED DRAFT AMENDMENTS

5. The draft amendments contain several measures that attempt to modernise the regulatory framework for satellite services, particularly for Non-Geostationary Orbit ("NGSO") and Low Earth Orbit ("LEO") satellite constellations.

6. The draft provisions concerning blanket licensing, Earth Stations in Motion ("ESIMs"), and cost-free registration of foreign satellite space segment operators are necessary and broadly aligned with international best practice.

7. Sakeliga supports the introduction of the blanket licence model in terms of the draft amendments to the RFS Fees Regulations. A blanket authorisation for a satellite terminal network, covering an unlimited number of terminals with similar technical and operational characteristics, is an appropriate regulatory response to modern LEO architecture.

8. Likewise, the express authorisation of ESIMs in terms of the draft RFS amendments is essential for a modern economy. Broadband connectivity on aircraft, maritime vessels, trains, trucks, emergency vehicles and mobile industrial assets, is a standard component of modern logistics management, safety, navigation, supply-chain visibility, passenger services, field operations, and disaster response.

9. The draft amendments also propose an exemption from licensing of foreign ESIMs that are only temporarily present in South Africa, subject to defined conditions and time limits. This aligns with international mobility, aviation and maritime practice. It

also avoids an absurd outcome in which aircraft, ships or land-mobile assets crossing South African territory must obtain duplicative local licensing (or restrict service to passengers / users) despite being duly authorised elsewhere and operating under recognised international norms. However, the draft amendments do not explain how the applicable conditions and limitations will operate in practice.

10. The proposed registration framework, particularly insofar as registration of foreign satellite space segment operators by means of Form F is at no fee, is a welcome addition.

11. These provisions recognise the technical reality of contemporary satellite networks and can materially improve access for businesses in rural, logistics, maritime, aviation, mining, agricultural and emergency-response environments. Data, networks and access are enablers to a modern economy and should be regarded as such.

THE BROADER MARKET ENTRY BARRIERS

12. However, the purported progress accomplished by the abovementioned supported draft provisions stands to be defeated by the existing legislative framework, and will not, on their own, open the South African market.

13. The Explanatory Memo to the RFS Fees Regulations expressly confirms that ICASA does not intend to create a new licence type, and states that the Gateway Earth Station licence and User-Terminal Network licence are to be treated as RFS licences.

14. Section 31 of the *Electronic Communications Act 36 of 2005* ("ECA") requires an RFS licence in addition to any service licence contemplated in Chapter 3. Chapter 3, by means of section 5, requires either Individual or Class service licensing for electronic communications network services ("ECNS") and electronic communications services ("ECS"). Section 9(2)(b)[1] introduces the requirement for ICASA to *"include the percentage of equity ownership to be held by persons from*

[1] Section 9 of the ECA deals with applications for and granting of individual licenses.

historically disadvantaged groups, which must be no less than 30%, or such other conditions or higher percentage as ay be prescribed".

15. Both Individual and Class licensing triggers certain minimum equity ownership, and/or other or B-BBEE requirements in order to gain market access.

16. For operators whose intended activities are characterised as requiring an Individual ECNS or ECS License, the *Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) and the application of the ICT Sector Code, 2021* (and the April 2022 amendments) ("HDG Regulations") impose, among other market entry barriers, a minimum 30% HDG equity ownership requirement determined through the Flow Through Principle, and a minimum B-BBEE contributor status level of 4 (four). They also impose additional minimum Black Equity requirements and require proof of compliance on an ongoing basis.

17. Although the HDG Regulations exempt Class Licensees from the minimum 30% HDG equity ownership requirement, they remain subject to the minimum B-BBEE Contributor Status Level prescribed by the Regulations.

18. The result is a paradoxical regulatory framework. On the one hand, the Authority proposes blanket licensing, ESIM authorisation and free space-segment registration, yet operators will still be unable to enter the market unless it satisfies the separate Chapter 3 licensing regime, HDG Regulations, and associated minimum ownership and B-BBEE obligations.

19. This is contrary to the stated purpose of the satellite services inquiry, being to reduce market entry barriers, attract investment, promote competition and reduce costs to consumers.

20. Sakeliga submits that these equity ownership and B-BBEE requirements are especially irrational when applied to NGSO systems such as global LEO constellations that operate through decentralised, cross-border, gateway-less architectures.

21. Such requirements serve no rational or legitimate purpose but simply deter market entry and investment, increase costs to consumers, and protect incumbents from healthy economic competition.

CONCLUSION

22. ICASA is bound by the Constitution, the ECA, the ICASA Act, PAJA, and the principle of legality. Its regulations must be lawful, rational, procedurally fair, and rationally connected to the statutory purpose for which the power is exercised.

23. While the amendments under discussion appear to pursue a legitimate purpose, a regulatory scheme is irrational where the means selected undermine its purpose.

24. It is irrational to, for example, recognise that NGSO satellite systems can reduce connectivity costs and serve underserved areas, while simultaneously preserving licensing requirements that make entry commercially impractical.

25. Requiring global satellite operators to alter ownership structures to provide technologically standardised direct-to-terminal services is not rationally connected to spectrum management, interference prevention, consumer protection or connectivity expansion.

26. The framework also implicates property and investment interests protected by section 25 of the Constitution. Spectrum authorisation is regulatory in nature, but the broader licensing regime affects the ability to deploy capital, equipment, contractual rights, network assets and commercial goodwill. Regulatory burdens that sterilise market entry without adequate justification impair investment-backed economic activity and weaken legal certainty.

27. Moreover, ICASA must also seriously consider the socio-economic consequences of the legislative framework in its current form. Artificial entry barriers preserve incumbent advantages, suppress competition, delay rural connectivity, raise enterprise costs and reduce South Africa’s attractiveness as a digital investment destination. These consequences follow directly from imposing terrestrial-era licensing burdens on satellite-era technology.

28. Sakeliga supports the provisions of the draft amendments that remove unnecessary spectrum-regulatory barriers, as discussed above. However, Sakeliga's support is conditional on the Authority eradicating the unresolved market entry and licensing barriers. RFS licensing cannot be treated as market liberalisation if Chapter 3 service licensing and the HDG Regulations remain a practical bar to entry for global NGSO/LEO operators.

29. ICASA should address remaining market entry barriers imposed by the licensing framework of the ECA and HDG Regulations, which will prevent these steps from achieving their purpose.

30. All of Sakeliga's rights remain reserved.

Sakeliga NPC

Submitted via e-mail on 29 June 2026