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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 781 OF 2016

AMENDMENT TO THE RADIO FREQUENCY SPECTRUM REGULATIONS, 2015

The Independent Communications Authority of South Africa ("the Authority") has amended the Radio Frequency Spectrum Regulations, 2015 (Notice No. 279 of 2015) to the extent reflected in the schedule.

Nomvuyiso Batyi
Councillor

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AMENDMENT OF THE RADIO FREQUENCY SPECTRUM REGULATIONS, 2015 DEVELOPED IN TERMS OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005, AS AMENDED)

The Independent Communications Authority of South Africa has, under section 4, read with sections 31(3), 34(7)(c)(iii), 34(8) and 34(16) of the Electronic Communications Act, 2005 (Act No. 36 of 2005, as amended), made the regulations in the schedule.

SCHEDULE

1. **Definitions**

In these regulations "the Regulations" means the regulations published by Government Notice No. 279 of 2015, as amended by Government Notice No. 386 of 30 April 2015.

2. **Amendment of regulation 1 of the Regulations**

2.1 Regulation 1 of the Regulations is hereby amended by the addition, after the definition "Dynamic Frequency Selection" of the following definition:

""**E Band**" means a set of frequencies in the range 71 -76GHz paired with 81 -86GHz"

2.2 Regulation 1 of the Regulations is hereby amended by the addition, after the definition "*MHz*", of the following definitions:

""**m ASL**" means height expressed in meters above sea level"
""**m AGL**" means height expressed in meters above ground level."

2.3 Regulation 1 of the Regulations is hereby amended by the addition, after the definition "*Radio telecommand*", of the following definition:

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"" **Radio Reception Blocking Device"** means a radio transmitter designed to transmit radio signals for the purpose of disrupting normal reception of radio signals in a radio frequency band or selected frequency ranges."

2.4 Regulation 1 of the Regulations is hereby amended by the addition, after the definition "*UHF*" of the following definition:

""**V Band"** is continuous block of 9 GHz of spectrum between 57 and 66 GHz"

3. Amendment of regulation 7 of the Regulations

Regulation 7, sub-regulation (3) of the Regulations is hereby amended by the substitution for paragraph (d) of the following paragraph:

"(d) has a minimum 30% (thirty percent) equity ownership held by persons from Historically Disadvantaged Groups; alternatively, in instances where an Applicant does not have such 30% equity ownership, must be a level 4 and above contributor (BBBEE status) in terms of the Codes of Good Practice published in terms of section 9(1) of the BBBEE Act."

4. Amendment of regulation 12 of the Regulations

Regulation 12 of the Regulations is hereby amended by the substitution for sub-regulation (6) of the following sub-regulation:

"(6) A radio frequency spectrum licence transfer application, in relation to licenses to which the extended application procedure applies, will be evaluated on the basis of the following criteria:

(a) Promotion of competition and interests of consumers;
(b) Equity ownership by HDPs; or

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(c) any other applicable criteria as provided for in the Act at the time of the award of the licence."

5. Amendment of regulation 12 of the Regulations

Regulation 12 of the Regulations is hereby amended by the substitution for sub-regulation (7) of the following sub-regulation:

"(7) A radio frequency spectrum licence transfer application, in relation to licenses to which the standard application procedure applies, will be evaluated on the basis of the same criteria used in the standard application procedure.,"

6. Amendment of regulation 12 of the Regulations

Regulation 12, sub-regulation (9) of the Regulations is hereby amended by the substitution for paragraph (c) of the following paragraph:

"(c) if such transfer will result in the reduction of equity ownership held by HDP to be less than 30%."

7. Amendment of regulation 15 of the Regulations

Regulation 15 of the Regulations is hereby amended by the substitution for sub-regulation (5) of the following sub-regulation:

"(5) A radio frequency spectrum licence transfer of control application, in relation to licenses to which the extended application procedure applies, will be evaluated on the basis of the following criteria:

(a) Promotion of competition and interests of consumers;
(b) Equity ownership by HDPs; and

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(c) any other applicable criteria as provided for in the Act at the time of the award of the licence."

8. Amendment of regulation 15 of the Regulations

Regulation 15 of the Regulations is hereby amended by the substitution for sub-regulation (6):

"(6) An application for transfer of control of a radio frequency spectrum licence, in relation to licenses to which the standard application procedure applies, will be evaluated on the basis of the same criteria used in the standard application procedure."

9. Amendment of regulation 15 of the Regulations

Regulation 15, sub-regulation (8) of the Regulations is hereby amended by the substitution for paragraph (c) of the following paragraph:

"(c) If such transfer will result in the reduction of equity ownership held by HDP to be less than 30%."

10. Insertion of regulations 16A and 16B of the Regulations

The following regulations are hereby inserted in the Regulations, after regulation 16:

"16A. Channel Plans

The E Band

(1) The use of the E-Band shall be as follows:

(a) The band 71 -76 GHz is paired with 81 – 86 GHz.
(b) The plan is based on 2 x 19 basic channels of 250MHz with 10GHz duplex separation and 125MHz guard channels on the band edges.
(c) The basic channels can be aggregated to form higher bandwidth channels.

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(2) The E Band is segmented as follows:

(a) A self-coordination block, 73.375–75.875 GHz paired with 83.375-85.875 GHz which shall be referred to as **Block A;** and
(b) A block coordinated fully licensed by the Authority, 71.125-73.125 GHz paired with 81.125-83.125 GHz which shall be referred to as **Block B.**

(3) The use of Block A shall be in the following manner:

(a) The prospective user shall notify the Authority of the position and technical details of the link (s) within 30-days of link deployment. Details of what needs to be notified are contained in Annex 1.
(b) Prior to link notification, the prospective user shall perform technical assessments against a database of already registered links. The link can only be registered once it has been established that it won't cause harmful interference to the links in the database.

(4) The use of Block B shall follow the standard application process as prescribed in the Radio Frequency Spectrum Regulations, 2015.

(5) The Technical parameters reflected in Annexure 3 must be complied with.

The V Band

16B. Radio Frequency Spectrum Licence Exemption

(1) The use of the V band is licence exempt provided that technical parameters reflected in Annex B are complied with.
(2) The detailed frequency coordination is not required and there are no prescribed channel arrangements.
(3) Single frequency (TDD) systems and two frequency (FDD) systems may use any channel.
(4) The radio frequency spectrum fee is not applicable."

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11. Substitution of regulation 39 of the Regulations

The following regulation is hereby substituted for regulation 6 of the Regulations:

"**39. Radio Reception Blocking Devices**

(1) No person may be in possession of a radio reception blocking device, also known as a radio jamming device, or radio equipment (incl. a mobile phone or any communication equipment of a similar nature) altered for the purpose of disrupting the reception of a radio frequency signal.

(2) The provisions of sub regulation (1) do not apply to any member of the security services, as defined in section 1 of the Act, who is required to possess a radio reception blocking device for a lawful purpose (incl. the execution of their functions) in accordance with a written agreement concluded between the Authority and the security services.

(3) The provisions of sub regulation (1) do not apply to an inspector appointed in terms of section 17F of the ICASA Act in carrying out his or her duties as an inspector."

12. Amendment of regulation 42 of the Regulations

Regulation 42 of the Regulations is hereby amended by the addition of the following sub-regulation:

"(8) Any person that contravenes the terms and conditions of their licence is subject to a fine not exceeding R5 000 000,00 (Five million rand)."

13. Short Title and Commencement

These Regulations are called the Radio Frequency Spectrum Amendment Regulations, 2016 and will come into force upon publication in the Government Gazette.

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PART IX – Annexures

14. Insertion of Annexure C1 of the Regulations

The following annexures are hereby inserted in the Regulations, after Annexure C:

"Annexure C1: E-band link registration database fields

The following Table gives the fields that needs to be completed in the online link registration database once implemented.

Licensee name	
The Authority's serial reference number	
Date of link registration with a time stamp	
Province	
Path length (km)	
Bandwidth (MHz)	
Bit-rate (Mbps)	
Receiver sensitivity	
Polarisation (H, V or H &V)	
Duplexing method (FDD /TDD)	
Site A	Site B
Geographical coordinates (dd:mm:ss)	Geographical coordinates (dd:mm:ss)
Ground Height (m ASL)	Ground Height (m ASL)
Antenna height (m AGL)	Antenna height (m AGL)
Equipment manufacturer	Equipment Manufacturer
Equipment Model Number	Equipment Model Number
Equipment type approval number (TA number)	Equipment type approval number (TA number)
Antenna manufacturer	Antenna manufacturer
Antenna model number	Antenna model Number
Antenna maximum gain (dBi)	Antenna maximum gain (dBi)
Antenna elevation angle (degrees)	Antenna elevation angle (degrees)
Antenna azimuth angle (degrees)	Antenna azimuth angle (degrees)
EIRP (dBW)	EIRP (dBW)
Transmit frequency (MHz)	Transmit frequency (MHz)

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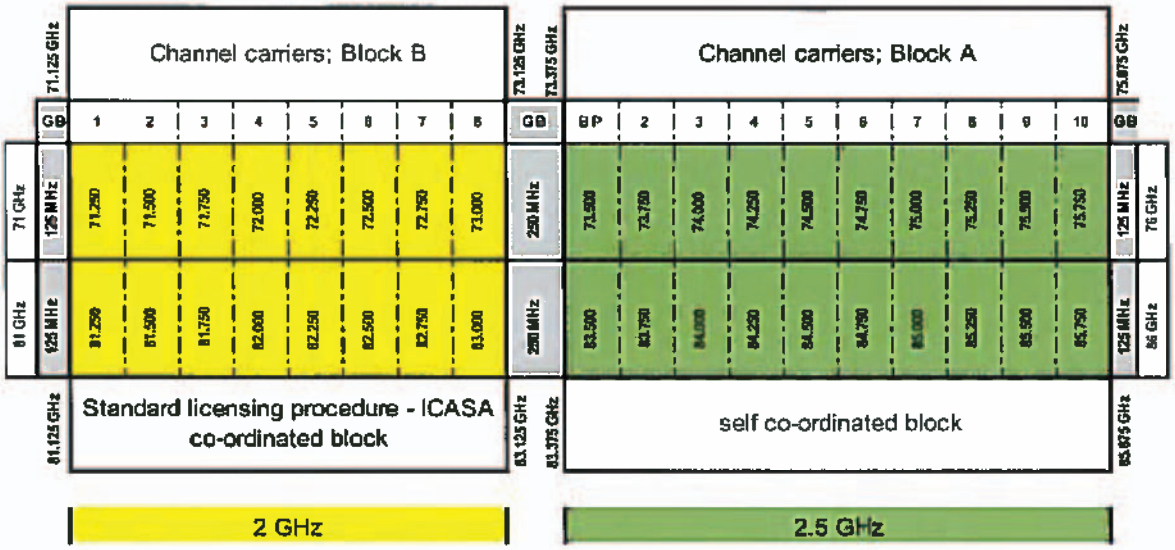
E-BAND CHANNEL ARRANGEMENTS AND TECHNICAL PARAMETRS.

E-BAND (71 - 81 GHZ paired with 81 - 86 GHz)

250 MHz channel spacing



Technical parameters

E- BAND TECHNICAL RULES		
Band	**71 – 76 GHz**	**81 – 86 GHz**
Maximum power	**35dBm**	
Maximum e.i.r.p	**+85**	**for G_{ant} > 55dBi**
	+85 – (55 – G_{ant})	**for 55dBi ≥ G_{ant}> 45dBi**
	+75 -2 x(45- G_{ant})	**for 45dBi ≥ G_{ant}> 38dBi**
Automatic transmit power control	**Optional**	
Maximum power spectral density	**150 mW/100MHz**	
Minimum Antennae gain	**38 dBi**	

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End of insertion…"

15. Substitution of Form B of Annexure A of the Regulations

The following form is hereby substituted for Form B of Annexure A of the Regulations:

"

FORM B

APPLICATION TO TRANSFER OR TRANSFER OF CONTROL OF A RADIO FREQUENCY SPECTRUM LICENCE

Note: (a) *Applicants must refer to the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the Act") and any regulations published under that Act with regard to the requirements to be fulfilled by applicants.*

(b) *Information required in terms of this Form which does not fit into the space provided may be included in an appendix attached to the Form. Each appendix must be numbered with reference to the part of the Form.*

(c) *Where any information in this Form does not apply to the applicant, the applicant must indicate that the relevant information is not applicable.*

(d) *Annexure E MUST be completed and submitted with this Form B, for spectrum license issued through an Extended Application Procedure*

Type of application:

☐ Transfer ☐ Transfer Control

1.	PARTICULARS OF LICENCE	
1.1	Licence number:	
1.2	Nature of services authorised to be provided in terms of the Licence:	

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1.3	Attach a copy of the Licence that is the subject of this application. The copy of the Licence must be marked clearly as **ANNEXURE A** of **FORM B 1**.

2. PARTICULARS OF THE TRANSFEROR (HOLDER OF THE LICENCE)	
2.1 Full name:	
2.2. Designated contact person:	
2.3 Street address:	
2.4 Principal place of business (if different from street address):	
2.5 Postal address:	
2.6 Designated contact person's telephone number/s:	
2.7 Designated contact person's telefax number/s:	
2.8 E-mail address of designated contact person:	

3. PARTICULARS OF THE TRANSFEREE (SEEKER OF RIGHTS UNDER THE LICENCE)	
3.1 Full name:	
3.2 Designated contact person:	
3.3 Street address:	
3.4 Principal place of business (if different from street address):	
3.5 Postal address:	
3.6 Designated contact person's Telephone number/s:	
3.7 Designated contact person's Telefax number/s:	
3.8 E-mail address of the designated contact person:	

4. LEGAL FORM OF TRANSFEREE
4.1 Indicate if the transferee is:

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(i) a natural person
(ii) a partnership
(iii) a juristic person
(iv) other (specify)
4.2 If the transferee is a natural person or a partnership:
4.2.1 Provide the identity number of the applicant or each partner in the transferal:
4.2.2 Attach a copy of the identity document of the transferee or certified copies of the identity document of each partner in the transferee marked clearly as **Annexure A** of **FORM B 2.**
4.3 If the applicant is a juristic person:
4.3.1 Indicate the legal form of the transferee (e.g. private company incorporated in terms of the Companies Act, 1973):
4.3.2 Registration number:
4.3.3 Attach certified copies of certificate of incorporation, and memorandum and articles of association or other constitutive and/or other governing documents (e.g. memorandum and articles of association, association agreement, constitution) marked clearly as **ANNEXURE A** of **FORM B 3.**
4.4 If the transferee is not a juristic person but intends to operate as one if this application is granted:
4.4.1 Provide a written undertaking that the transferee will comply with section 5(8) (b) of the Act marked clearly as **ANNEXURE A** of **FORM B** 4.
4.4.2 Indicate when and how the transferee will comply with section 5(8) (b) of the Act:

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5. OWNERSHIP AND MANAGEMENT OF THE TRANSFEREE
5.1 Provide details of all ownership interests and the identity and address of each holder of an ownership interest in the transferee. Where the transferee is a juristic person, only shareholdings (or equivalent) of 5% or more of the total issued shares (or equivalent) in the applicant are relevant.
5.2 Indicate whether the transferee is listed on any stock exchange, and provide details of any such listing:
5.3 In respect of each holder of any ownership interest in any person holding an ownership interest in the transferee, provide the details required in respect of each such holder:

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5.4 Indicate the extent to which any ownership interest referred to above is held by an historically-disadvantaged person:
(a) Before the rights under the licence are acquired:
(b) After the rights under the licence are acquired:
5.5 Indicate whether the holder of any ownership interest in the transferee is a foreign citizen or an entity registered or incorporated in any country other than South Africa:
5.6. Indicate whether any person holding an ownership interest in the transferee holds a Licence issued in terms of the Act or holds an ownership interest in any other licensee licensed to provide a service similar to that to which this application relates:

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5.7. Provide particulars of any ownership interest held by the transferee in another licensee licensed in terms of the Act:
5.8. Provide details (including name, nationality, identification or passport number, position and address) of each member of the transferee's: (i) Board of directors or similar body; and (ii) Senior management.
6. BUSINESS PLAN OF THE TRANSFEREE
6.1 Provide details of the transferees' business plan in respect of the licensed service outlining details as per format in Annexure D (ii-v) marked clearly as **ANNEXURE A** of **FORM C 5**:

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6.2 Provide details of how the promotion of competition will be achieved by the transfer of the licence as **ANNEXURE A** of **FORM B 6:**
6.3 Provide separately and mark clearly as **ANNEXURE A** of **FORM B 7**, copies of the audited annual financial statements for the previous three (3) years:
7. TRANSFEROR 'S LICENCE OBLIGATIONS
7.1 Indicate those obligations in terms of the licence which have been discharged and those which will be assumed by transferee, should this application be granted:
7.2 Provide separately and mark clearly as **ANNEXURE A** of **FORM B 8**, a written undertaking given by the transferee, through its duly authorised representative, that it will comply with the transferor's licence obligations in the event of the transfer application being approved by the Authority.
8. REASONS FOR THE TRANSFER/TRANSFER OF CONTROL
Provide reasons for the transfer of the Radio Frequency Spectrum Licence:
9. LICENCE SUBJECT TO TRANSFER/TRANSFER OF CONTROL
9.1 Indicate if transferor obtained licence through:

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Standard Application Procedure ☐

Extended Application Procedure ☐

9.2 Subject to regulation 12(5) of the Regulations, indicate the amount to be paid by the transferee to the transferor for the transfer of the licence:

R.....

9.3 Indicate which Radio Frequency Spectrum is currently licensed to transferor as **ANNEXURE A** of **FORM B 9.**

10. UNDERTAKINGS

Specify any undertakings which the transferee is prepared to make in order to promote the objectives of the Act, if the Licence is transferred:

11. SWORN STATEMENT

The persons signing the application on behalf of the applicants must acknowledge as follows:

I, the applicant, acknowledge that the Authority reserves the right to have any Licence amended pursuant to this application being set aside, should any material statement made herein, at any time, be found to be false.

....

Transferor **Transferee**

I certify that this declaration was signed and sworn to before me at ..... on the ..... day of ..... 20..., by the deponent who acknowledged that he/she:

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1. knows and understands the contents herein;
2. has no objection to taking the prescribed oath or affirmation; and
3. considers this oath or affirmation to be truthful and binding on his/her conscience.

.....

COMMISSIONER OF OATHS

Name:

Capacity:

Address:

End of substitution…"

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