

2 November 2021

Independent Communications Authority of South Africa

Attention: Mr Davis Kgosumolao Moshweunyane

Per email: IMTLicensing@icasa.org.za

ISPA SUBMISSIONS: HIGH DEMAND SPECTRUM INFORMATION MEMORANDUM

1. The Internet Service Providers' Association (ISPA) refers to the "Notice regarding Information Memorandum on Licensing of Spectrum in the IMT700, IMT800, IMT2600 and IMT3500 bands" published in the Government Gazette 45255 on 1 October 2021 ("**the HDS IM**") and sets out below submissions on the issues raised therein.
2. While ISPA's members have a clear interest in an optimal spectrum assignment process, ISPA's submissions have not been prepared with a view towards participation by any ISPA member in the planned spectrum assignment process.
3. ISPA believes that it is critical that this assignment process is brought to a successful conclusion as efficiently as possible. The intention of these submissions is to try to provide practical perspectives to the Authority as it moves towards issuing a new invitation to apply (ITA).

Process

4. ISPA attended the workshop on the HDS IM hosted by the Authority and noted the widespread calls for the Authority to amend its proposed process and to publish a draft ITA instead of a second information memorandum.
5. ISPA supports this call.
6. ISPA further submits that the Draft ITA should be accompanied by a reasons document - includes an updated competition analysis – which motivates for the positions adopted by the Authority in the ITA.

Sub 1GHz (IMT700 and IMT800) radio frequency spectrum

7. ISPA has taken note of the following:
 - 7.1. The litigation initiated by Telkom against the Authority relating to the ITA issued in October 2021 and the settlement thereof. A central aspect of this litigation was the claim that it was unlawful for ICASA to assign IMT700 and IMT800 spectrum prior to the conclusion of the broadcasting

digital migration (BDM) process. Given the settlement and the withdrawal of the ITA published in October 2020 (“**the October 2020 ITA**”) this claim has not been tested.

- 7.2. The history of the BDM process and the deadline of end March 2022 set by the Minister of Communications and Digital Technologies for the completion of this process.
 - 7.3. Further litigation relating to the BDM process and deadline and the misalignment in understanding of what constitutes the completion of BDM and the commercial availability of all IMT700 and IMT800 spectrum forming part of the assignment process. In ISPA’s understanding this litigation raises important Constitutional issues and has the potential to cause further delays to BDM completion.
8. The link between the spectrum assignment process and the BDM process continues to constitute a major risk to the timeous and successful conclusion of the spectrum assignment process.
- 8.1. ISPA does not believe that it can be stated with any certainty that the BDM process will be completed by the new deadline provided or that there is a date which can be committed to on which IMT700 and IMT800 spectrum will be available for commercial use by electronic communications network service (ECNS) licensees.
 - 8.2. Should the Authority proceed as contemplated in the October 2020 ITA ISPA is unsure as to what would stop Telkom, eTV or any other party from raising their previous objection that it is unlawful to auction
9. ISPA submits that the Authority should consider whether the assignment process can be de-risked by de-linking it from the BDM process.
- 9.1. As indicated in the HDS IM, the Authority is considering not auctioning IMT700 and IMT800 spectrum until the BDM process is completed. This would be a sub-optimal outcome because (a) it would require a second process and (b) there is inherent value in an offering of sub-1GHz and mid-band spectrum in the same assignment process.
 - 9.2. Postponing the entire assignment process until BDM has been completed and IMT700 and IMT800 spectrum is available is also sub-optimal in that it results in delays in assigning available IMT2300 and IMT3500 spectrum.
 - 9.3. A further approach would be to continue with an ITA for all of the currently identified bands with a clear stipulation that successful bidders for IMT700 and IMT800 spectrum would only receive licences for the use of such spectrum once the BDM process had been completed and the

spectrum was available for commercial use. It would be clear that no obligations attaching to the licence – including roll-out obligations

9.4. This last approach effectively removes the dependency of the spectrum assignment process on the BDM process.

9.5. Although this is beyond the Authority's mandate and subject to litigation, there will need to be a clear and agreed definition as to the set of circumstances which would trigger the issuing of the licences.

Opt-in Round

10. ISPA submits that any discretion to be exercised by the Authority in deciding which Lots to make available in the Opt-in round must be explicitly circumscribed so that potential participants in the process have a degree of certainty as to what Lots will be available.

Spectrum caps

11. ISPA supports the proposed overall spectrum cap and the motivation advanced.

Roaming arrangements

12. ISPA agrees that the roaming arrangements currently in play are commercial agreements which do not involve the recipient operator obtaining rights to spectrum utilized in providing the roaming service. It follows that such spectrum should not count towards any spectrum cap imposed on the recipient operator.

IMT3500 band

13. ISPA agrees that the characterization of spectrum bands as "4G" or "5G" during the current spectrum assignment process is not helpful.

Spectrum requirements for the WOAN

14. ISPA agrees with the approach set out in this section.

Conclusion

15. ISPA trusts that the above is of assistance.

Regards

INTERNET SERVICE PROVIDERS' ASSOCIATION