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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**GENERAL NOTICE 668 OF 2021**

PURSUANT TO THE PUBLICATION OF THE INFORMATION MEMORANDUM IN GOVERNMENT GAZETTE NO. 45255 ON 1 OCTOBER 2021 AND THE SUBMISSIONS RECEIVED THERETO, THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY ISSUES A SECOND INFORMATION MEMORANDUM ON THE LICENSING PROCESS FOR INTERNATIONAL MOBILE TELECOMMUNICATIONS IN RESPECT OF THE PROVISION OF MOBILE BROADBAND WIRELESS ACCESS SERVICES FOR URBAN AND RURAL AREAS USING THE COMPLIMENTARY BANDS, IMT700, IMT800, IMT2600 AND IMT3500, FOR PUBLIC CONSULTATION

1. The Independent Communications Authority of South Africa (“the Authority”) hereby issues a second Information Memorandum (“second IM”) in relation to the radio frequency spectrum licences for International Mobile Telecommunication (IMT) Spectrum bands in the ranges of 703 – 790 MHz (“IMT700”), 790 – 862 MHz (“IMT800”), 2500 – 2690MHz (“IMT2600”), and 3400 – 3600 MHz (“IMT3500”) for the purposes of providing national broadband wireless access services in terms of with regulations 6 and 7 of the Radio Frequency Spectrum Regulations 2015, as amended, read with section 31 (3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“the ECA”).
2. This second IM is intended to reflect the key elements to be contained in the ITA to be published on the 10 December 2021.
3. Interested persons are hereby invited to submit written representations, including an electronic version of the application in Microsoft Word and signed PDF versions, **by no later than 16h00 on Tuesday, 30 November 2021. No late submissions will be considered.**
4. Written representations may be directed to:
Block C
The Independent Communications Authority of South Africa (the Authority)
350 Witch-Hazel Avenue,
Eco Point Office Park, Centurion, Gauteng.

Attention:

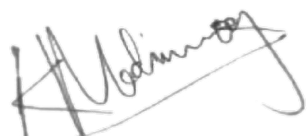
Mr. Davis Kgosimolao Moshweunyane

E-mail: imtlicensing@icasa.org.za

5. All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons from 16h00 on Monday, 6 December 2021 at the ICASA Library or website (www.icasa.org.za) and copies of such application and documents will be obtainable on payment of a fee.

6. Where persons making submissions require that their written representations, or part thereof, be treated confidentially, then an application in terms of section 4D of the ICASA Act, 2000 (Act No. 13 of 2000) must be lodged with the Authority. Such an application must be submitted simultaneously with the application in response to the ITA. Respondents are requested to separate any confidential material into a clearly marked confidential annexure. If, however, the request for confidentiality is refused, the person making the request will be allowed to withdraw the written representation or document in question.

7. The guidelines for requesting confidentiality are contained in Government Gazette Number No. 41839 (Notice 849 of 2018).



DR. KEABETSWE MODIMOENG
CHAIRPERSON
DATE: 15/11/2021

Abbreviations and acronyms

B-BBEE – Broad Based Black Economic Empowerment

ECA – The Electronic Communications Act, 2005 (No. 36 of 2005)

ECNS – Electronic Communications Network Service

ICASA Act – Independent Communications Authority of South Africa Act, No 13 of 2000 (as amended)

ICT – Information and Communication Technology

I-ECNS – Individual Electronic Communications Network Service

IMT – International Mobile Telephony

ITA – Invitation To Apply

ITU – International Telecommunications Union

MVNO – Mobile Virtual Network operator

Definitions

Applicant	An I-ECNS licensee that has lodged an application in accordance with the ITA
Application	Documentation lodged by an Applicant in accordance with the ITA
Activity Points	The number of points associated with each Lot during the auction stage
Activity	The sum of the Activity Points for each Lot on which a Bidder places a Bid in a Round, combined with the Activity Points of Lots on which the Bidder is Standing Highest Bidder, defines the total Activity of the Bidder within the Round.
Auction Fee	The amount due and payable by a winning Bidder and calculated as the sum of the price for spectrum won in the

	Opt-In Round (if any) and the sum of Standing High Bids on the Lots which the Bidder has won in the Main Stage.
Authorised Representative	A representative with Power of Attorney appointed by the Applicant/Bidder
Authority	The Independent Communications Authority of South Africa
Bid	A binding offer by the Applicant to acquire a Lot at a certain price
Bidder	An Applicant who has successfully passed the Qualification Stage
Licence	A radio frequency spectrum licence issued pursuant to the ITA
Lot	A pre-packaged amount of spectrum available for award (allocated on a generic basis unless otherwise stated, with specific frequencies assigned to winning bidders in a following procedure)
Mobile Virtual Network Operators (MVNO)	Is a wireless communications services provider that does not own the wireless network infrastructure over which the MVNO provides services to its customers.
Prohibited Practices	Any practice prohibited in terms of section 4(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998), as amended
Region	A rural or urban geographic retail market in each province of South Africa
Reserve Price	The minimum price for a Lot. This is also the starting price of a Lot in the first Round.
Round	A period during which each Bidder is invited to submit a set of bids. Each Round will end after the allotted round time has

	expired, regardless of whether all Bidders have submitted Bids, following which the Round results will be announced.
SMRA	Simultaneous Multi-Round Ascending Auction.
Standing High Bid	The highest bid submitted for a Lot in a round.
Standing High Bidder	The Bidder in a Round with the Standing High Bid
Sub-national Operator	A licensee that controls access to its RAN and is capable of providing IMT services on a wholesale basis to roaming and MVNO customers, where the licensee's RAN is capable of serving less than 50% of the population in South Africa.
Opt-in Round	A single bidding round in the Opt-in Auction phase.
Tier-1 operator	A Wholesale National Operator that has a retail market share in excess of 45% in at least 1 Region.
Tier-2 operator	A Wholesale National Operator that is not classified as a Tier-1 operator.
Wholesale National Operator	A licensee that controls access to its RAN and is capable of providing IMT services on a wholesale basis to roaming and MVNO customers, where the licensee's RAN is capable of serving more than 50% of the population in South Africa.
National Capacity	Capacity = average data traffic speed (measured in megabits per second (Mbps)) per cell/base station at any given time offered by the WOAN using the high demand spectrum assigned to the WOAN. National Capacity = Total capacity offered nationally irrespective of technology used.

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1 Overview

- 1.1 On 28 May 2010, the Authority initiated the process of developing the High Demand Radio Frequency Spectrum Licensing Framework Regulations by promulgating General Notice R. 469, Government Gazette 33248 of 28 May 2010, as amended, for the 2.6 and 3.5 GHz spectrum bands.
- 1.2 On 31 March 2011, the Authority published the Radio Frequency Spectrum Regulations, 2011 in General Notice No. 184, Government Gazette 34172 of 31 March 2011, which, amongst others, repealed the High Demand Radio Frequency Spectrum Licensing Framework Regulations, 2010.
- 1.3 On 15 December 2011, the Authority published a draft Spectrum Assignment Plan for the radio frequency range 790 – 862 MHz (800 MHz) and 2500 – 2690 MHz (2.6 GHz) in General Notice No. 911, Government Gazette 34872 of 15 December 2011.
- 1.4 Further, the Authority published the Draft Invitation To Apply to solicit public comments on the award / granting of Radio Frequency Spectrum Licence to provide mobile broadband wireless access service for urban and rural areas using the complimentary bands, 800 MHz and 2.6 GHz in General Notice 912, Government Gazette No. 34872 of 15 December 2011. The Draft Invitation to Apply was subsequently withdrawn.
- 1.5 On 06 December 2013, the Minister of Communications published South Africa Connect: Creating Opportunities, Ensuring Inclusion - South Africa's Broadband Policy ("SA Connect") in General Notice 953, Government Gazette No. 37119 of 6 December 2013. SA Connect gives expression to the vision set out in the National Development Plan 2030 ("NDP") of a "seamless information infrastructure by 2030 that will underpin a dynamic and connected vibrant information society and a knowledge economy that is more inclusive, equitable and prosperous".
- 1.6 SA Connect was followed by the Integrated ICT White Paper Policy, 2016 and subsequently by the Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network published in terms of Government Gazette No. 42597 of 26 July 2019.

- 1.7 The focus of the aforementioned policies remains universal provision of broadband services including in particular ensuring connectivity for public services i.e. education, health and government services. The policies further seek to operationalise the New Growth Path and the Strategic Integrated Project (SIP) 15, which deals with expanding access to communications technology by ensuring universal service and access to affordable and secure broadband services by all South Africans, prioritising rural and under-serviced areas in order to stimulate economic growth.
- 1.8 SA Connect acknowledges that the slow deployment of fixed broadband services and its relatively high cost, has meant that over the years mobile broadband rapidly became the primary form of broadband access rather than providing a complementary service to fixed broadband services as it has done in more developed economies.
- 1.9 On 30 March 2015, the Authority published the Radio Frequency Spectrum Regulations, 2015 in General Notice No. 279, Government Gazette No. 38641 of 30 March 2015 ("Radio Frequency Spectrum Regulations, 2015"). The Radio Frequency Spectrum Regulations, 2015 repealed the Radio Frequency Spectrum Regulations, 2011 and the Spectrum Reallocation for Radio Frequency Identification (RFID) Systems.
- 1.10 On 11 September 2015, the Authority published the Information Memorandum for Radio Frequency Spectrum Prospective Licence in General Notice No. 914, Government Gazette No. 39203, with the purpose of providing information to prospective applicants intending to apply for the radio frequency spectrum licenses within the designated range, 2500 – 2690MHz ("the 2.6 GHz band") and 790 – 862 MHz ("the 800 MHz band") and 703 – 790 MHz ("the 700MHz band") for the purposes of providing national broadband wireless access services.
- 1.11 On 15 July 2016, the Authority published an ITA for a Radio Frequency Spectrum Licence to provide mobile broadband wireless access services for urban and rural areas using the complimentary bands: 700MHz, 800MHz and 2.6 GHz in General Notice No. 438, published in Government Gazette No. 40145 of 15 July 2016.

- 1.12 On 08 October 2018, the Authority withdrew the ITA that was published on 15 July 2016 in terms of General Notice No. 624, Government Gazette No. 41965 of 08 October 2018.
- 1.13 On 26 July 2019, the Minister of Communications and Digital Technologies (formerly Minister of Communications) published the Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network. The Authority has a legal duty to consider the Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network in exercising its powers and performing its duties under the ECA.
- 1.14 The Authority initiated the licensing process through the publication of the Information Memorandum on 01 November 2019 for the radio frequency spectrum in the bands: IMT700, IMT800, IMT2300, IMT2600 and IMT3500 for the purposes of providing national broadband wireless open access services.
- 1.15 In order to realise Government's rollout targets for broadband services and to achieve articulated public objectives (in line with *inter alia* SA Connect, NDP, the Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network and Government Priority Outcomes: 4, 6, 12, and 14), the Authority commenced the licensing process for IMT spectrum bands.
- 1.16 On 02 October 2020, the Independent Communications Authority of South Africa ("the Authority") published an Invitation to Apply on the licensing process for International Mobile Telecommunications ("IMT") in respect of the provision of the mobile broadband wireless access services for urban and rural areas using complimentary bands IMT700, IMT800, IMT2600 and IMT3500 published in the Government Gazette 43768 ("ITA").
- 1.17 On 28 December 2020, the Authority received six (06) applications responding to the ITA. On 22 December 2020 and 12 January 2021 Telkom and e.tv respectively filed a court application, against the Authority, which culminated in an interdict being issued against the Authority on 08 March 2021, interdicting the Authority from proceeding with the spectrum auction process.

- 1.18 On 27 January 2021, MTN filed a court application against the Authority's ITA. In the main, MTN's submission was that certain aspects of the auction ITA were legally flawed, *inter alia*, the provisions relating to the classification of Tier 1 and Tier 2 operators and the inclusion of an Opt-In Scheme. 4. Subsequently, on 23 February 2021, Vodacom submitted its counter application to have the Court confirm the correct interpretation of the Opt-In Scheme. Vodacom also submitted that it would abide by the relief sought by MTN on the Operator Categorization.
- 1.19 Pursuant to settlement negotiations amongst the litigants, on 15 September 2021, the Court granted an order, amongst others, reviewing and setting aside the Authority's decision to publish the ITA and referring the matter back to the Authority for consideration. In light of the Court Order, the Authority published the first Information Memorandum ("IM") for public consultation which included, amongst others, matters related to competition aspects, IMT700 and IMT800 bands and the deadline of 1 November 2021 for providing public representations.
- 1.20 The submission deadline was subsequently changed to 2 November 2021 at 12 midday due to a proclamation by the President of South Africa that 1 November 2021 would be a public holiday for the municipal elections.
- 1.21 On 2 November 2021, the Authority received 10 written representations by 12 midday from the following companies:
- 1.21.1 Telkom
 - 1.21.2 Vodacom
 - 1.21.3 MTN
 - 1.21.4 Rain
 - 1.21.5 Community Investment Ventures Holdings
 - 1.21.6 South African Communication Forum
 - 1.21.7 South African Radio Astronomy Observatory
 - 1.21.8 Paul Hjul
 - 1.21.9 Competition Commission South Africa
 - 1.21.10 Association of Progressive Communications.

1.22 Pursuant to the consideration of the inputs made in the written representations submitted timeously, the Authority hereby publishes the second IM for consultation. The second IM should be read together with the published Reasons Document.

2 Introduction

- 2.1 South Africa experiences continued growth in demand for spectrum as a result of significant growth in traffic for broadband services. The deficiency of assigned Spectrum for IMT brings constraints and challenges in the provision of broadband services. To address South Africa's bandwidth deficiency, the currently assigned bandwidth of 609 MHz high-demand spectrum ("HDS") will be increased to 935 MHz through the current assignment processes.
- 2.2 It is the Authority's position that the licensing of IMT700, IMT800, IMT2600 and IMT3500 will contribute significant bandwidth towards achieving the SA Connect targets.
- 2.3 The IMT700, IMT800, IMT2600 and IMT3500 bands have been identified worldwide for IMT services. These bands complement each other in the sense that they fulfil the requirements for capacity and coverage which make them suitable for rural and urban areas and for bridging the digital divide.
- 2.4 It is for these reasons that the Authority proposes the simultaneous licensing of the IMT700, IMT800, IMT2600 and IMT3500 bands, in order to enhance competition and to increase broadband coverage, and in so doing bridge the digital divide and the disparities between urban and rural access to broadband networks
- 2.5 The Authority has considered the Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network in accordance with section 3 (4) of the ECA and intends to embark on the licensing process as outlined in this second IM. The aforementioned bands are proposed for prioritisation by the Authority for purposes of assignment in accordance with Policy on High Demand spectrum and Policy Direction of the Licensing of Wireless Open Access Network and the Authority's Strategic Plan 2020 - 2024.

2.6 It is important to adopt global harmonisation channel arrangements and alignment with other regional agreements on the appropriate channel plans for the IMT700, IMT800, IMT2600 and IMT3500 frequency bands for the ITU Region 1 in order to achieve economies of scale, enable global roaming and benefit from the maturity of the ecosystem.

2.7 The Southern African Development Community ("SADC") Frequency Allocation Plan ("FAP") of 2016 creates a framework for harmonisation across SADC on the use of the radio frequency spectrum. The 2016 SADC FAP was developed considering international best practice in the development of Frequency Band Plans and considering the needs of the SADC Members.

3 Objectives

3.1 This licensing process intends to fulfil some of the objectives in section 2 of the ECA, which are as follows:

OBJECTS OF THE ECA	PROPOSED METHOD TO ACHIEVE THE OBJECTIVES
Promote broad-based black economic empowerment, with particular attention to the needs of women, opportunities for youth and for persons with disabilities	Section 9(2)(b) of the ECA read together with regulation 7(3)(d) of the Radio Frequency Spectrum Regulations, 2015 (as amended) sets out the B-BEEE requirements, which will be applied as part of the pre-qualification criteria.
Promote the universal provision of electronic communications networks and electronic communications services and connectivity for all	Coverage and quality obligations have been set out for various tiers of licensees in a manner that is proportionate to their ability to achieve those obligations.

Promote the interests of consumers with regard to the price, quality and the variety of electronic communications services;	The spectrum auction design, including spectrum caps, floors, and pro-competitive open access obligations proposed, have been designed to level the playing field and encourage competition between licensees according to price and quality.
Develop and promote SMMEs and cooperatives	The open access obligations proposed in respect of spectrum sharing seeks to enable SMMEs to gain access infrastructure to compete at retail level.
Encourage investment and innovation in the communications sector	The amount of spectrum to be assigned through this process, aims to generate significant investment and innovation in the sector.
Promote an environment of open, fair and non-discriminatory access to electronic communication networks and to electronic communications services	The open access obligations are aimed at promoting open, fair and non-discriminatory access to infrastructure.
Promote competition within the ICT sector	<p>The amount of spectrum availed for auction aims to address the increased demand for bandwidth and to increase quality of service.</p> <p>The auction design which includes spectrum floors, spectrum caps, opt-in round, discounted reserve prices and spectrum sharing provisions aim to</p>

	ensure the entry of licensees without spectrum and promote competitive prices.
Promote and facilitate the development of interoperable and interconnected electronic networks, the provision of the services contemplated in the ECA and to create a technologically neutral licencing framework	The spectrum will be licensed on a technology neutral basis.
Ensure efficient use of the radio frequency spectrum	The pre-qualification criteria will ensure that spectrum will be assigned to licensees that will value it most. In terms of the proposed licence conditions, licensees that do not fully make use of the spectrum within 5 years of the issuance of the licence, will be required to share it.

4 Legal framework

4.1 This publication of the second IM is guided by the Constitution of the Republic of South Africa, 1996 (the "Constitution"), the ICASA Act, the ECA, the National Radio Frequency Plan 2018 ("NRFP"), the Radio Frequency Spectrum Regulations, 2015 (as amended) and Radio Frequency Spectrum Assignment Plans for IMT, 2013 (as amended), as well as the broader policy objectives of South Africa as set out in:

4.1.1 The National Integrated ICT White Paper, 2016 ("White Paper");

4.1.2 The National Development Plan;

4.1.3 South Africa Connect: Creating Opportunities, Ensuring Inclusion South Africa's Broadband Policy (SA Connect);

4.1.4 Broadcasting Digital Migration Policy 2008 (as amended);

4.1.5 Radio Frequency Spectrum Policy 2010; and

4.1.6 The Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network dated 26 July 2019 ("HDS and WOAN Policy").

5 Spectrum for the award

5.1 The Authority has, following consideration of the HDS and WOAN Policy determined that the spectrum available for assignment in this process will be as follows¹:

5.2 2 x 20MHz in the 700MHz band (713 – 733MHz // 768 – 788MHz)

5.3 2 x 30MHz in the 800MHz band (791 – 821MHz // 832 – 862MHz)

5.4 1 x 140MHz in the 2600MHz band (2530 – 2575MHz) and 2595 – 2690MHz)

5.5 1 x 86MHz in the 3500MHz band (3458 – 3544MHz)

5.6 The spectrum will be awarded on a national basis covering the entire territory of the Republic of South Africa.

5.7 Applicants are eligible to bid for any of the Lots. The Authority notes that the Minister has committed to complete the digital migration process by 31 March 2022.² Assuming that this deadline is met, the Authority will include the IMT700 and IMT800 bands in the licensing process. However, should this deadline not be met, the Authority will continue to license the IMT700, IMT800, IMT2600 and IMT3500 bands but the Authority will consider the proportional payments³ on the IMT700 and IMT800 based on the availability of these two bands.

5.8 The reserve price for each Lot is different. The reserve prices and spectrum available for award is packaged as follows:

Lot number(s)	Lot category	Lot size	Number of lots available	Reserve price per lot
1-4	700 MHz	2 x 5 MHz	4	R526 615 392,49
5-8	800 MHz	2 x 5 MHz	4	R752 307 703,55
9	800 MHz	2 x 10 MHz	1	R1 155 174 976,66
10-23	2600 MHz	1 x 10 MHz	14	R97 843 320,52
24	3500 MHz	1 x 2 MHz	1	R9 818 987,30

¹ The spectrum set-aside for the WOAN has been excluded

² <https://www.gov.za/speeches/minister-khumbudzo-ntshavheni-broadcast-digital-migration-and-analogue-switch-5-oct-2021>

³ Auction and Annual Spectrum Fees

Lot number(s)	Lot category	Lot size	Number of lots available	Reserve price per lot
25 - 32	3500 MHz	1 x 10 MHz	8	R75 606 202,22
33	3500 MHz	1 x 4 MHz	1	R19 637 974,60

6 Opt-in lots and spectrum floors

- 6.1 The Authority has identified two alternative minimum spectrum portfolios (MSPs) in order to ensure that there are a third and fourth national wholesale operators (Tier-2) with adequate spectrum following the auction. The Opt-in bidders need not have any spectrum holdings currently and bidding for the Opt-in lots is open to any bidders other than Tier-1 operators.
- 6.2 The IMT Spectrum holdings of a bidder will be used to determine the suitability of that bidder to participate in the Opt-in Round. Bidders who do not already meet either MSP 1 or MSP 2 will be qualified to Opt-in.
- 6.3 Bidders qualified to participate in the Opt-in round are those who do not meet the spectrum requirement for both portfolio 1 and 2, as provided in Table 1. Those qualified to bid for spectrum in the Opt-in Round (including new sub-national wholesale operator entrants) will be offered the opportunity to Opt-in.

Table 1: Minimum Spectrum Portfolios

		IMT Spectrum Sub-1 GHz	IMT Spectrum Above 1 GHz
Minimum Portfolio 1	Spectrum	2 x 10 MHz	60 MHz
Minimum Portfolio 2	Spectrum	2 x 15 MHz	40 MHz

- 6.4 A qualified bidder to participate in the Opt-in Auction in respect of any particular category of one of the MSPs, may bid for such lots on offer in that category and will, if acquired by that bidder, eliminate that bidder to bid for additional Lots in the Opt-in round. When bidding for MSP 1 or MSP 2, the bidder may bid for and acquire only the smallest amount of spectrum that would "make good" that bidder's MSP, taking into account their existing IMT Spectrum holdings.
- 6.5 No licensee can end up with more than one MSP as a result of the Opt-in round.
- 6.6 Provided there is demand, the Opt-in round will result in two bidders ending up with MSPs as close as possible to the two MSPs set out in the Table 1 as the principles set out above allow. This means that a bidder can only acquire a spectrum combination to make up the MSP either through Portfolio 1 or Portfolio 2. The Authority proposes to set aside IMT700 and IMT2600 for MSP 1. Whereas for MSP2, the Authority will set aside IMT800 and IMT2600.
- 6.7 No bidder can acquire any Lot in the Opt-in round if the acquisition of the Lot in a category in which it is qualified would result in that bidder exceeding its spectrum cap. For further information about how the Opt-in Auction will be run, see Section 15.2.
- 6.8 MSP 1 and MSP 2 are spectrum floors designed to ensure that South Africa is left with at least five (5) credible wholesale national operators after the spectrum assignment process (including the WOAN). This is to ensure that the third and fourth national wholesale operators have enough spectrum to be credible competitors. These portfolios do not preclude any licensee from bidding for spectrum on any other Lots made available by the Authority for auction subject to the spectrum cap.
- 6.9 A spectrum cap is a limit placed on the amount of spectrum a Bidder can bid for in an auction. An Applicant will be allowed to bid up to the following spectrum caps:
- 6.9.1 Sub-1GHz safeguard cap of 2x21 MHz (including existing sub-1GHz spectrum holdings); and

- 6.9.2 An overall spectrum cap of 187MHz (including existing assigned spectrum holdings).
- 6.3 The sub-1GHz cap will allow all current holders of 2x11MHz of spectrum in the 900MHz band to acquire at most 2x10MHz of spectrum, and the cap will also allow licensees that have no sub-1GHz spectrum to acquire up to 2x20MHz.
- 6.4 The overall spectrum cap of 187 MHz is to ensure that any individual licensee must not acquire more than approximately 20% of the 935 MHz of high-demand spectrum that will be assigned at the auction stage and the spectrum set-aside for the WOAN.

7 Licence duration

A Licence is valid for twenty (20) years from the date of issue taking into consideration the residual analogue and digital television broadcasting service migration below 694 MHz band timescales in South Africa.

8 Technologies

All Licences will be issued on a technology-neutral basis in accordance with section 2 (b) of the ECA read with the regulation 3.7 of the Radio Frequency Assignment Plans, 2015, as amended. **Annual licence fees**

- 9.1 A Licence is renewable upon payment of the prescribed licence fee in accordance with regulation 10 (2) of the Radio Frequency Spectrum Regulations, 2015, as amended.
- 9.2 Annual licence fees are payable by all Licensees in accordance with the "Spectrum Fees Regulations" published by the Authority.

10 Technical conditions

The conditions of use of the IMT Spectrum will be in accordance with the rules for services as stipulated in the Radio Frequency Spectrum Assignment Plans, 2015 for all the applicable bands (as amended).

11 Obligations

The Authority is to measure compliance with obligations related to the IMT700 and IMT800 spectrum bands from the date the digital migration process is completed. The following obligations will form part of the license conditions of the Radio Frequency Spectrum License to be issued:

11.1 Uplink and throughput obligations

11.1.1 A minimum downlink single user throughput of 5Mbps at the edge of the cell (particularly in Batch 3 classified municipalities) for all national wholesalers who are awarded radio frequency spectrum licenses on spectrum band(s) IMT700 and/or IMT800 within five (5) years of licence issue. This obligation must be achieved with IMT bands (i.e. IMT2600, and IMT3500) assigned through this licensing process and any other assigned IMT spectrum prior to this process.

11.2 Coverage obligations

11.2.1 The definition of what constitutes an Underserviced Area is contained in the Under-serviced Area Definitions Regulations published on 10 September 2012 in the Government Gazette No. 35675 (Notice No. 9825 of 2012), as amended by the Authority from time-to-time. The underserviced areas contained in Annexure A of the Under-serviced Area Definitions Regulations are classified into three Batches (Batch 1: Good; Batch 2: Fair; and Batch 3: Poor) for better implementation of coverage obligations stated in this second IM, based on best effort.

11.2.2 In respect of 700MHz or 800MHz licenses:

Tier 1 operators

- 11.2.2.1 Any other Tier-1 player who wins ANY further sub-1GHz spectrum would be obliged to expand coverage at a minimum 97% of the population. Also, the outside-in approach applies, to achieve 92% across all Batch 2 and Batch 3 underserved areas first for the 2x10MHz Coverage Lot across all local and metropolitan municipalities in South Africa within 5 years of issuance of the license; and
- 11.2.2.2 Outside-In: First build broadband coverage in the first batch of least covered of "underserved areas" and/or municipalities (Batch 2 and 3 Municipalities), before proceeding to roll out finally to major cities and towns of South Africa (Batch 1).

Tier 2 operators

- 11.2.2.3 Tier-2 operators that cover less than 80% of the population with IMT services must expand such coverage to at least 80% of the population in general across South Africa, including Batch 1 and Batch 2 areas in accordance with their commercial interest. This obligation does not apply to sub-national wholesalers who do not Opt-in for Lots. The outside-in obligation would not apply to these Tier-2 national wholesalers.

Tier 1 and Tier 2 Both Tier 1 and Tier 2 operators will be required to have one 2x10MHz (on IMT800) Coverage Lot carrying a coverage obligation of at least 99.8% of the population within 5 years of issue of radio frequency spectrum licence; and at least to 95% across totality of ALL Batch 2 and Batch 3 underserved areas/municipalities in South Africa. The winner of this coverage lot would comply with an outside-in approach to achieve 95% of all Batch 2 and Batch 3 underserved areas of all local and metropolitan municipalities in South Africa within 5 years of issuance of the license;

11.3 Open access obligations

11.3.1 Prospective applicants that have categorised as Tier-1 will:

11.3.1.1 Produce a reference offer for site access to be offered to any licensee requesting site access and guidelines, including pricing, timeframes and policies for reserving space on masts.

11.3.2 The reference offer set out by the applicant in terms of paragraph 11.3.1.1 shall become licence conditions for licences to two tier-1 operators issued in this auction process.

11.3.3 A Licensee assigned spectrum through the auction process will be required to provide open access to MVNOs which must have 51% ownership held by persons from Historically Disadvantaged Persons. This provision shall become licence conditions for licences issued in this auction process. The Licensee assigned spectrum through the auction process shall be required to submit to the Authority within a period of between 3 – 6 months the business plans to ensure that the MVNOs are sustainable for the period of 3 years.

11.3.4 These interventions are intended to balance the objectives in the ECA to promote competition within the ICT sector (section 2(f) of the ECA), take the electronic communication needs of the public into account (section 2(y) of the ECA) and promote stability in the ICT sector (section 2(z) of the ECA) on the one hand while refraining from undue interference in the commercial activities of licensees on the other. These interventions balance these objectives in a proportionate manner for the following reasons:

11.3.4.1 These are the proposed minimum interventions necessary, together with the spectrum caps and floors provided for in this document, to resolve the competition concerns.

11.3.4.2 The licensees will be able to propose how the interventions can be achieved in the least intrusive manner with the least possible interference in their commercial activities.

11.4 Incentives to the WOAN

- 11.4.1 The applicants that are to be assigned the radio frequency spectrum through the auction process shall procure a minimum of 30% national capacity from the WOAN collectively as soon as the WOAN is operational for a period of five years.
- 11.4.2 The 30% national capacity to be procured from the WOAN will be shared proportionally to the amount of the spectrum acquired from the Auction amongst the successful licensees.
- 11.4.3 The 30% national capacity uptake in the WOAN will be imposed on all successful applicants as licence terms and conditions in accordance with regulation 7(e) of the Radio Frequency Spectrum Regulations, 2015 as amended.

11.5 Social obligations

- 11.5.1 A Licensee assigned spectrum through the auction process will be required to zero-rate all the Mobile Content provided by Public Benefit Organisations including .gov.za websites.

11.6 Spectrum Sharing

- 11.6.1 The spectrum in the licensing process is to be assigned on a national basis exclusive to the Licensees.
- 11.6.2 In cases where the spectrum is not fully utilised by the licensee within 5 years of issuance of the Radio Frequency Spectrum Licences, the Authority will initiate the process for the Licensee:
- 11.6.2.1 to share unused spectrum in all areas to ECNS licensees who may, inter alia, combine licensed spectrum in any innovative combinations in order to address local and rural connectivity in some municipalities including by entrepreneurial SMMEs;
- 11.6.2.2 to surrender the radio frequency spectrum licence or portion of the unused assigned spectrum in accordance with Radio Frequency Spectrum Regulations, 2015; and

11.6.2.3 the Authority has the power to cancel the issued radio frequency spectrum licence in accordance with the Radio Frequency Spectrum Regulations, 2015.

12 Karoo Central Astronomy Advantage Areas

- 12.1 The Astronomy Geographic Advantage Act, 2007 (Act No. 21 of 2007) (AGAA) provides for the Minister responsible for Science and Technology to declare any area or part of an area in the Province of the Northern Cape (except Sol Plaatje Municipal area) as an astronomy advantage area (AAA). The AAA's must be protected, amongst others, from harmful radio frequency interference, which may be caused by radio communication services.
- 12.2 The Square Kilometer Array ("SKA") has been built in the Northern Cape Province. The SKA location, frequencies bands to be protected, protection levels, coordination procedures, and other parameters are prescribed through the Astronomy Geographic Advantage Act (21/2007) (AGA Act): Notice of the radio frequency spectrum exempted for use within the Karoo Central Astronomy Advantage Areas published in Government Gazette Number 42531 (Notice 926 of 2019). The band 100 MHz to 25.5 GHz are earmarked for the SKA.
- 12.3 Radiocommunications with transmitters located within the AAA's, which operate within the radio frequency range/s identified for radio astronomy purposes are to be subjected to the provisions of the AGAA. All transmitters located, or to be located, within the AAA's will be subject to authorisation according to the prescribed processes by the AGAA. Where authorisation has been granted in accordance with the prescribed procedures, a prospective licensee is still required to submit a spectrum application form for consideration by the Authority.
- 12.4 A prospective licensee, upon receipt of its radio frequency spectrum licence and when deploying the network, is required to safeguard the above-mentioned provisions to ensure that no radio frequency interference is caused to the Karoo Central Astronomy Advantage Areas.

13 Empowerment provisions for the industry

13.1 The obligations proposed herein are intended to promote broad-based black economic empowerment, in addition to what is already prescribed in terms of Regulation 7 of the Radio Frequency Spectrum Regulations, 2015.

13.2 A licensee would have to, within 12 months of being issued with a radio frequency spectrum licence, reach a Level 1 contributor (BBBEE status) in terms of the Codes of Good Practice, applicable to the ICT Sector, published in terms of Section 9 (1) of the BBBEE Act and maintain such status for the period of the licence.

13.3 This empowerment provision would be imposed over and above the prescribed prequalification criteria as outlined in regulation 7 (3)(d) of the Radio Frequency Spectrum Regulations, 2015 as amended.

14 The award process of the spectrum

14.1 Process

14.1.1 The award process will consist of four stages, which includes the publication of the invitation to apply, qualification, auction and licensing stages.

14.2 Invitation to Apply stage

14.2.1 The first stage will commence with the publication of the ITA, containing inter alia the details about all subsequent stages of the auction. It will include application forms, date and format of submission of applications, pre-qualification criteria, the detailed rules of the auction, the details of the "products" being auctioned (e.g. lots, reserve prices per lot, etc.), constraints about the products (e.g. availability of digital switchover spectrum) and more. This stage also "markets" the auction both nationally and internationally to potential bidders.

14.3 Qualification stage

14.3.1 Entities that are eligible to submit an application

14.3.1.1 In the Qualification Stage, any interested juristic persons are invited to submit Applications in response to the ITA, in which they must state on which Lots they wish to place Bids during the award process.

14.3.1.2 The Applications will then be assessed by the Authority, and Applicants who meet the requirements as specified in the ITA will be qualified.

14.3.2 Submission of Applications

14.3.2.1 The Authority is to publish the ITA on 10 December 2021 with the closing date of 28 January 2022. Within this period, the applications that the Authority had received against the ITA published in Government Gazette 43768 (Notice No.535) of 2 October 2020 may be amended or withdrawn.

14.3.3 Application fee

14.3.3.1 Each Applicant will pay a non-refundable application fee of Three Million Rands (ZAR 3 000 000.00). The payment will be in the form of an electronic transfer or via a direct deposit into the following ICASA bank account:

ICASA Banking Details

BANK: Nedbank

BRANCH: Nedbank Corporate Investment Banking

BRANCH CODE: 198765

ACCOUNT NO: 1462002927 Swift Code: NEDSZAJJ

REFERENCE: Applicant Name

14.3.3.2 The applicants who submitted applications in response to the ITA, published in Government Gazette 43768 (Notice No.535) of 2 October 2020, will not be required to pay the application fee

14.3.4 Initial review of Applications

14.3.4.1 The Authority will undertake an initial review of the applications in order to determine whether the applications are submitted in accordance with the specified rules and contain the correct information and documentation.

14.3.4.2 The applications will be disqualified with the criteria as set out on the table below, in accordance with regulation 7(3) of the Radio Frequency Spectrum Regulations, 2015 as set out below:

An applicant shall be disqualified from the application process where such applicant:
(a) has submitted an application and is an affiliate of another applicant, or has an ownership or financial interest in another applicant within the same application process;
(b) has been granted a radio frequency spectrum licence by the Authority within the designated range unless the licensee has less than the maximum bandwidth made available in line with these regulations in which case they will only be allowed to apply for additional spectrum which results in total assignment not exceeding the maximum bandwidth made available;
(c) has submitted more than 1 (one) application to the Authority for the grant of a radio spectrum licence within the designated range;
(d) has less than 30% (thirty percent) equity ownership by Historically-Disadvantaged Persons (HDP) or is below a level 4 ⁴ contributor (BBBEE status) in terms of the Codes of Good Practice published in terms of section 9(1) of the BBBEE Act;
(e) has submitted an application which contains false or misleading information;
(f) is colluding or has attempted to collude with another applicant with the intention to distort or manipulate information;
(g) has obtained or acquired confidential information relating to another applicant;
(h) has failed to notify the Authority of the changes referred to in the application forms;
(i) has failed to comply with the terms and conditions of the application as set out in the ITA;

⁴ Below level 4 means applicant BBBEE status is from level 5 to 8 as per Amended Broad-Based Black Economic Empowerment (B-BBEE) ICT Sector Code - 7 November 2016, Government Gazette No. 40407

(j) has failed to comply with a request in terms of Radio Frequency Spectrum Regulations;
(k) has failed to comply with a request in terms of Radio Frequency Spectrum Regulations;
(l) Has failed to pay non-refundable application fee and attach the proof of payment;
(m) not possession of a valid Individual Electronic Communications Network Services Licence issued by the Authority in terms of the ECA.

14.3.5 Assessment of the applications

14.3.5.1 The Authority will assess the applications using the criteria set out in regulation 6(2) of the Radio Frequency Spectrum Regulations, 2015.

14.3.6 Bank guarantee

14.3.6.1 Each applicant will be required to submit a bank guarantee as part of its application. The amount guaranteed by the bank should be equal to ZAR10 000 000.00 (Ten Million Rands). It should be valid for 90 days after the application Date. Where an applicant has submitted a valid bank guarantee in response to the ITA, published in Government Gazette 43768 (Notice No.535) of 2 October 2020, such bank guarantee will still be applicable.

14.3.6.2 The Authority may require payment against the guarantee in order to cover penalties for any breach of the auction/licensing rules or compensation that accrue during the Auction Stage.

14.3.6.3 The Authority may require increases in the bank guarantee during the Auction Stage. The amount and the deadline for submission of the additional guarantees will be communicated to each Bidder. The bidding process will then be suspended until the deadline.

14.3.6.4 Applicants that cannot provide the required bank guarantee will be disqualified from the Auction Process.

14.3.6.5 The bank guarantee must not accrue interest.

14.3.6.6 The guarantee shall be released by the Authority in the following cases:

14.3.6.7 At the end of the Auction Stage, if a Bidder is unsuccessful in winning a Licence

14.3.6.8 Once a winning Bidder has fulfilled the payment terms.

15 Auction stage

15.1 Overview

- 15.1.1 The Auction Stage consists of three phases of bidding and frequency selection:
- 15.1.2 The Opt-in Auction Phase. The format selected for the Opt-in Auction is a Simultaneous Sealed Bid.
- 15.1.3 The Main Auction Phase. The format selected for the Main Auction is a Simultaneous Multiple Round Ascending (SMRA) auction.
- 15.1.4 The Frequency Assignment Phase. Winning bidders will be given the opportunity to pick their contiguous frequency assignments, consistent with the spectrum that they won in the first two phases.
- 15.1.5 The Opt-in Auction consists of a single bidding round. Eligible bidders may submit bids for one or both minimum spectrum portfolios (MSPs). The rules for the Opt-In Auction are set out in section [15.2, below](#).
- 15.1.6 The Main Auction will commence after the conclusion of the Opt-In Auction. It will consist of one or more rounds. In each Round, Bidders will have the opportunity to place Bids on any of the available Lots, providing those Bids are consistent with the Activity Rules and Spectrum Caps. In normal circumstances, bidding will continue until there is a Round in which no new Bids are placed and no Waivers are used. The rules for the Main Auction are set out in section [15.3](#) below.
- 15.1.7 The Frequency Assignment Phase will be scheduled after the conclusion of the auction. Winning bidders will take turns to pick contiguous frequency blocks, with the order determined by their winning bid amounts. The rules for the Frequency Assignment Phase are set out in section [15.12, below](#).

15.2 Opt-in Auction

- 15.2.1 After the completion of the Qualification Stage, the Authority will notify each bidder regarding their eligibility to participate in the Opt-in Auction and the amount of spectrum in each frequency band that they are entitled to win under MSP 1 and under MSP 2.
- 15.2.2 The Authority will give each eligible Bidder at least 24 hours prior notice before the start of the Opt-in Round, by making an announcement. The duration of the Opt-in Round will be decided by the Authority in its sole discretion although the Authority does not anticipate it will be less than 30 minutes or longer than two hours in duration.
- 15.2.3 The Authority will only schedule the Opt-in Round to take place between 10am and 5pm on a Business Day. The Authority will give further guidance on the scheduling of the Opt-in Round during the Award Process, probably after the Last Day for Withdrawal.
- 15.2.4 The Authority will prepare a bid form for each eligible Bidder to fill out and return to the Authority during the Opt-in Round.
- 15.2.5 Bidders submit bids for the premium amount they are willing to pay for the spectrum associated with the MSP over the sum of reserve prices for that spectrum. Hence, a bid for an MSP represents a binding obligation on a bidder if selected as the winning bidder to pay the amount of the bid PLUS the sum of the reserve prices associated with the spectrum lots that an individual bidder is entitled to acquire under that MSP. The minimum bid for each MSP is zero. There is no maximum bid but all bids must be in multiples of ZAR100 000.
- 15.2.6 After the bidding round closes, the Authority will proceed to determine the winning bids and their associated prices based on the bids submitted during the Opt-in Round. There can be at most two winning bids, one each for MSP 1 and MSP 2:
- 15.2.6.1 The Authority will rank all bids received for MSP 1 from highest to lowest. The highest ranked bid is the winning bid for MSP 1.

- 15.2.6.2 The Authority will next rank all bids received for MSP 2 from highest to lowest, but discarding the bid submitted by the winner of MSP 1 (if any). The highest ranked bid is the winning bid for MSP 2.
- 15.2.6.3 Each winning bidder must pay a price equal to the lower of (a) the bidder's own winning bid; and (b) the highest bid for either MSP 1 or MSP 2 that was submitted by a bidder that did not win either MSP. In addition, each winning bidder must pay the sum of the reserve prices associated with the spectrum in their winning MSP.
- 15.2.7 After the Opt-in Round, the Authority will announce the number of Bidders that submitted valid Opt-in Bids, the identity of the winning bidders for each MSP, the spectrum that they will be assigned, and the prices that they must pay for that spectrum. The Authority may also publish the same information on its website.
- 15.2.8 Any spectrum assigned in the Opt-In Round will be removed from the Main Auction. For example, suppose that the Opt-In Auction assigns two packages, one for 2x10 MHz in the 700 MHz band and 20 MHz in the 2600 MHz band, and one for 2x5 MHz in the 800 MHz band. In this case, lots 3-4 (700 MHz), lots 20-23 (2600 MHz) and lot 8 (800 MHz) would be removed from the Main auction, as the equivalent spectrum has already been assigned.

15.3 Main Auction Bid Rounds

- 15.3.1 There will be at least one full working day between the completion of the Opt-In Round and the start of the first round of the Main Auction.
- 15.3.2 Before each Round begins, the Authority will communicate to all Bidders the Standing High Bid and Standing High Bid amount on each Lot (if any), as well as the price options available for each Lot that can be Bid on in the current Round.
- 15.3.3 Bidding will take place using an online system. Bid submission is a two-step process. In the first step, eligible bidders may submit a set of bids for the available lots. In the second step, bidders will receive a summary of their proposed bids and will be asked to confirm their bids or return to step 1 to make changes. Only confirmed bids will be considered valid bids. Once a set of bids is confirmed, no further changes may be made to the bid amounts.
- 15.3.4 In the first round, each bidder is free to submit a bid for one or more lots and may make bids for any of the available Lots, subject to the following restrictions:
- 15.3.4.1 The set of bids must be consistent with eligibility points-based Activity Rule, as set out in Section [15.5, below](#);
- 15.3.4.2 The set of bids must not breach the Spectrum Caps, taking into account each bidder's existing IMT spectrum holdings; and
- 15.3.4.3 Bidder may only submit bids for Lots in the Lot Categories for which they have qualified to bid.
- 15.3.5 From the second round onwards, the same restrictions apply but, in addition, a Bidder is not permitted to submit a new bid on Lots on which it is currently the Standing High Bidder.
- 15.3.6 In any round except the first round, instead of submitting a Bid, a Bidder may:
- 15.3.6.1 Use a Waiver (see [15.6](#) below for further details); or

15.3.6.2 Withdraw from the auction (see [15.7](#) below for further details).

- 15.3.7 Each Round will end after the allotted round time has expired, regardless of whether all Bidders have submitted Bids.
- 15.3.8 Once the Round is finished, the new Standing High Bidders and Standing High Bid amounts will be determined, based on the highest Bid placed on each Lot.
- 15.3.9 If one or more Lots have received Bids from multiple Bidders of value equal to the maximum bid value of the Round, the Standing High Bidder will be selected by means of a tie-break conducted within the online system.
- 15.3.10 Each Bidder that placed a Bid equal to the maximum Bid for the Lot will have an equal chance of being selected as the Standing High Bidder.
- 15.3.11 The status of Standing High Bidder on a particular Lot is maintained until another Bidder places a Bid for that Lot in a subsequent Round at a higher price.

15.4 **Bid options**

- 15.4.1 For each Lot in each round, using the online system, bidders place bids by selecting an amount from a menu of one or more pre-specified bid options. The bid amount options for each Lot in each Round will be decided by the Authority and may be revised as the Auction progresses.
- 15.4.2 In each round where there is a Lot that has not yet received any bids, the bid options shall include a bid option at the Reserve Price. Once a Lot has a Standing High Bid, all bid options will be set at amounts that exceed the current Standing High Bid amount.
- 15.4.3 Further guidance regarding the Authority's approach to setting bid options may be provided to qualified bidders before the start of the auction. To assist bidders in preparing for the auction, the following indicative guidance is provided:
- 15.4.3.1 The Authority is minded to announce any changes to the percentage increments (i.e. the difference between the Standing High Bid amount

and the bid amount options) to be applied to Lots in each Lot Category to be communicated to all Bidders before the end of the previous bidding day.

- 15.4.3.2 The Authority is minded to adopt bid increment options in the range of 1%-20% of the Standing High Bid on each Lot. Bid Increments will not necessarily be the same for all Lots (in percentage or absolute terms).
- 15.4.3.3 So as to ensure the Auction moves at a reasonable pace, the Authority is minded to start with bid increment options of 10%, 15% and 20% of the Standing High Bid on each Lot. It may introduce other bid increments later.
- 15.4.3.4 The Authority is minded to round up bid amount options to the nearest ZAR100 000 (One Hundred Thousand Rands), even if this means modestly exceeding reference percentage increments.

15.5 Eligibility points-based Activity Rule

- 15.5.1 An eligibility points-based Activity Rule will be used to prevent bidders from withholding demand at early stages of the auction. In each round, a bidder's Activity cannot exceed their current Eligibility.
- 15.5.2 In each Round, a Bidder will receive a certain Eligibility measured in points, based on its Activity in the previous Round.
- 15.5.3 In the first Round, as there is no previous round, a Bidder's Eligibility will be set equal to its maximum permitted level under the Spectrum Cap.
- 15.5.4 Each Lot will have an associated number of Eligibility Points, based on the likely ability for bidders to substitute between the lots, as follows:

Lot number(s)	Eligibility Points per Lot
1-4	4
5-8	4
9	4
10-23	1
24	1
25-32	1
33	1

- 15.5.5 A ratio of 4:1 per MHz will be used for the eligibility points in respect of sub-1 GHz spectrum relative to spectrum at IMT 2600 MHz / IMT 3500 MHz. This ratio is comparable to the ratios used in the reserve prices for Lots in these Lot Categories, and reflects the fact that spectrum in sub-1 GHz bands is more limited and is generally considered to have higher value than higher frequency bands.
- 15.5.6 The sum of the Eligibility Points of each Lot on which a Bidder will place a Bid in a Round, combined with the Eligibility Points of Lots on which the Bidder is Standing High Bidder, will define the total Activity of the Bidder within the Round. The only exceptions to this occur if the Bidder places a Waiver (see Section [15.6 below](#)) or a Withdraw (see Section [15.7 below](#)).
- 15.5.7 Eligibility in the following Round will be set equal to the Bidder's Activity in the current Round. Thus, it will not be possible for a Bidder's Eligibility to increase.
- 15.5.8 If a Bidder is a Standing High Bidder on Lots which have a combined Eligibility Points level equal to the Bidder's Eligibility for the Round, the Bidder will not be able to submit any new bids and will not be able to play a waiver. For the avoidance of doubt, this means that the Bidder's Eligibility equals their Activity, so their Eligibility will remain unchanged in the next round.

15.6 **Waivers**

- 15.6.1 The use of a Waiver will enable a Bidder to maintain its Eligibility in the next Round, without submitting a new bid in the current Round.
- 15.6.2 Each Bidder will begin the auction with Three (3) Waivers, which may be used in any round of the auction except the first round. The Authority does not anticipate granting any additional waivers to Bidders but may do so under the exceptional circumstance provision (section [15.13 below](#)).

- 15.6.3 A Bidder may choose to submit a Waiver in place of making new Bids on Lots, provided it (a) has at least one Waiver remaining, (b) will lose eligibility if it does not place at least one new bid; and (c) has not withdrawn from the auction. For the avoidance of doubt, a bidder that submits a waiver is not permitted to also submit new bids at the same time.
- 15.6.4 If a Bidder is a Standing High Bidder on any Lots when it uses a Waiver, it will remain Standing High Bidder unless another Bidder places a Bid of greater value on those Lots.
- 15.6.5 When a Waiver is used, the Bidder retains the same level of Eligibility for the next Round as it had in the current Round.
- 15.6.6 If a Bidder does not submit a valid Bid before the end of the Round, then a Waiver is automatically used for that Round, provided it (a) has at least one Waiver remaining, (b) will otherwise lose eligibility; and (c) has not withdrawn from the auction.

15.7 **Withdraw from the auction**

- 15.7.1 In any Round except the first round, Bidders will have the opportunity to withdraw from the auction. The online system will not provide bidders with an option to withdraw in round 1, as all qualified bidders are expected to bid for at least one lot in that round. A bidder that fails to submit a bid in round 1 would not be entitled to make further bids in the auction and maybe subject to additional penalties, including not limited to the loss of its bank guarantee amount.
- 15.7.2 If a Bidder chooses to submit a Withdrawal, it will no longer be eligible to submit new Bids in the auction. It is not possible for a Bidder to submit Bids and a Withdrawal in the same Round.

- 15.7.3 If a Bidder withdraws when it has Standing High Bids on one or more Lots, it will remain Standing High Bidder unless and until another Bidder places a higher Bid on the relevant Lot(s). As a result, it is possible for a Bidder that has withdrawn to win Lots which it had bid on before the Withdrawal, provided no other Bidders place further Bids on those Lots.
- 15.7.4 If a Bidder (a) has no standing high bids; (b) fails to submit a valid Bid before the end of the Round, and (c) has no remaining Waivers, it will automatically be deemed to have withdrawn from the auction.
- 15.7.5 It is not possible for a Bidder to withdraw Bids that it has previously placed in the auction. This includes any Standing High Bids the Bidder has in a round when it places a Withdraw.

15.8 Information provided to Bidders

- 15.8.1 The Authority has discretion regarding the information to be provided to bidders at the end of each round. The following paragraphs describe the expected approach.
- 15.8.2 After the end of each Round, Bidders will be provided with the following information for each Lot:
- 15.8.2.1 The aggregate demand for each Lot, including a breakdown of Bids submitted by each Bidder.
- 15.8.2.2 The Standing High Bid amount
- 15.8.2.3 The identity of the Standing High Bidder
- 15.8.2.4 The bid amount options allowed in the following Round.
- 15.8.3 Bidders will also be provided the following additional information:
- 15.8.3.1 The identity of any Bidders that used a Waiver in the previous Round.
- 15.8.3.2 The number of Waivers each Bidder has remaining.
- 15.8.3.3 The Eligibility of each Bidder in the following Round.
- 15.8.3.4 The start time of the following Round.
- 15.8.3.5 The duration of the following Round.

15.9 Closure of the Main Auction

- 15.9.1 The auction will close once a bid Round has been completed in which no new Bids were placed and no Waivers were used.
- 15.9.2 Once the auction has closed, the Standing High Bidders on each Lot will be designated the winners of those Lots.
- 15.9.3 Following this, each Bidder's Main Auction fee is calculated as the sum of the Standing High Bids on the Lots which the Bidder has won. These fees are in addition to any fees for spectrum won in the Opt-In Auction.
- 15.9.4 The final auction results will be communicated to bidders via the online auction system. The Authority may also announce the results on its website.

15.10 Auction location

- 15.10.1 The Authority intends to conduct the Main Auction using an online auction system run over standard Internet browsers. This will enable bidders to participate from their own location.
- 15.10.2 In the Main Auction, bids should normally be submitted through the online system. This online system can be accessed using a desktop or laptop computer using a standard operating system, a reliable Internet connection and a supported web browser. Each qualified bidder will also need individual secure credentials, which will be provided to the Authorised Representatives before the Auction. Further information about accessing and using the online system, including back-up procedures in case a bidder experiences problems accessing the online system, will be provided in the bidder manual, which will be distributed to eligible applicants. The Authority also intends to run a seminar and training session for qualified bidders prior to the auction.
- 15.10.3 If a bidder uses an operating system or web browser that is not supported by the online system, the online system may not function properly. It will be the responsibility of each bidder to verify during the mock auction that the online system functions properly on its system.

15.10.4 In addition to submitting bids, qualified bidders will be able to use the online system to download certain information about their bids and the state of the auction (such as Round Prices and Standing High Bids). Sample files will be distributed to qualified bidders.

15.11 Auction timing for Main Stage

- 15.11.1 Rounds are scheduled at the Authority's discretion. All rounds will normally be scheduled to take place between 9.00am and 5.00pm Central African Time on South African business days. An indicative schedule for each day's rounds will be published prior to the opening of the first round of that day.
- 15.11.2 There is no minimum or maximum duration for a round. However, the Authority does not anticipate running rounds shorter than 15 minutes or longer than two hours. The time between rounds is also discretionary. The first round will have a duration of at least one hour.
- 15.11.3 If bid decisions by all bidders are submitted before the scheduled close of the round, the Authority reserves the right to close the auction round early. Consequently, the bidding schedule could be faster than anticipated in the indicative schedule.
- 15.11.4 There is no upper bound on the number of rounds per day, although the Authority does not anticipate running more than 16 rounds in a single day. When determining the number and length of rounds each day, the Authority will consider the pace of the auction, including the level of bid increments and number of lots going up in price each round.

15.12 Frequency Assignment Phase

- 15.12.1 After the conclusion of the Main Stage of the Auction, the Authority will run a procedure to assign specific frequency blocks to winning bidders. Whenever feasible, it is the Authority's intention that all winning Bidders be assigned contiguous spectrum within each spectrum band. Further information about the procedure will be provided to qualified bidders before the Auction.

15.13 **Exceptional circumstances**

15.13.1 In the case of exceptional circumstances during the award process, the Authority has the discretion to:

15.13.1.1 cancel the Auction process;

15.13.1.2 suspend the Auction process until further notice;

15.13.1.3 pause the Auction process, for example between rounds, and require bidders to increase their deposit;

15.13.1.4 if the Auction Stage is underway:

15.13.1.4.1 postpone the end of a round in progress or the release of results of a round;

15.13.1.4.2 postpone the scheduling of further rounds;

15.13.1.4.3 cancel a round that is either underway or for which round results have not yet been released, and re-schedule the round;

15.13.1.4.4 grant additional waivers to one or more bidders;

15.13.1.4.5 void one or more rounds and the bids made therein, and resume the auction from an earlier round; and/or

15.13.1.4.6 void all bids received in the award process and either suspend the award process or start the award process again.

15.13.2 The Authority determines whether a situation of exceptional circumstances has arisen. Exceptional circumstances could include, for example, widespread technical failure or concern about possible collusion amongst bidders.

15.14 **Independent auditor**

15.14.1 An independent auditor will be appointed by the Authority to oversee the auction process.

15.14.2 The auditor will be permitted access all the activities of each Bidder.

16 Licensing stage

Following the completion of the Auction Stage, payment of the Auction Fee will be requested from the winners of the Lots.

16.1 **Payment of the Auction Fee**

16.1.1 The Auction Fee payable by each winning Bidder will be the sum of:

16.1.1.1 The winning price for the MSR package won in the Opt-in auction (if any); and

16.1.1.2 The Standing High Bids on the Lots which the Bidders has won in the Main Auction.

- 16.1.2 Any penalties for any breach of the auction/licensing rules incurred during the award process must be paid in full at the same time as the payment of the Auction Fee.
- 16.1.3 It is the responsibility of the participants to arrange their own finance in order to pay the Auction Fee. The payment of the Auction Fee must be paid into the Authority's bank account within thirty (30) working days after the public announcement of the award process results by the Authority for the Lots acquired in IMT2600 and IMT3500.
- 16.1.4 For Lots acquired from the IMT700 and IMT800, Auction Fee must be paid into the Authority's bank account within thirty (30) working days after the public announcement of the award process results by the Authority proportionate to the geographic or population coverage as determined by the Authority.
- 16.1.5 Instructions for the payment of the Auction Fee will be sent in two days of the announcement to the winning Bidders.
- 16.1.6 Non-payment, late or incomplete payment of the Auction Fee may lead to the non-issuing of the Licence. The Lot may then be auctioned at a later stage or the Authority may determine an alternative licensing process in terms of the Radio Frequency Spectrum Regulations, 2015 (as amended).

16.2 **Issue of Licences**

- 16.2.1 Once the payment of the Auction Fee has been received by the Authority, the Licences will be issued to the winning Bidders.

17 General rules

17.1 **Prohibited Practice and other disruption to the auction**

- 17.1.1 Until the conclusion of the award process (i.e. once Licences have been issued). Applicants must not:
- 17.1.2 Disclose any Confidential Information to other Applicants,

- 17.1.3 Enter into agreements with other Applicants in relation to the award process, or
- 17.1.4 Undertake any action that may adversely affect the award process.
- 17.1.5 Disclosure of information of any nature, which, directly or indirectly, concerns a Bid submitted by an applicant or a Bid that an applicant considers submitting, if such information could affect the price that an applicant would offer. Confidential Information must include any non-published information about an applicant's strategy, including the Bid that an applicant is willing to submit, which may affect the applicant's price or submission of a Bid, and which may influence the applicant's fulfilment of its Bid, as well as information about financing the Bid sum.
- 17.1.6 Any cross-directorships or cross-shareholdings between Applicants is not permitted, and applicants are not permitted to agree on any price or on any allocation of markets or spectrum between each other.

17.2 **Consortiums / groups**

- 17.2.1 Consortiums / groups of companies without an I-ECNS licence will be not permitted to bid in this auction in order to prevent the possibility of collusion.

17.3 **Sanctions**

- 17.3.1 In the event that an Applicant breaches the auction rules, the Applicant can either be fined at the discretion of the Authority but permitted to continue in the award process, or be fined and excluded from the award process, depending on the severity of the breach. If an applicant is excluded from the award process, the Authority reserves the right to annul the entire award process.

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