

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE NO. ____2021



NOTICE INVITING WRITTEN REPRESENTATIONS

Review of the ICT COVID-19 National Disaster Regulations

The Independent Communications Authority of South Africa (“the Authority”), hereby invites interested parties and members of the public to make written representations on the issues which the Authority should consider regarding the review of the ICT COVID-19 National Disaster Regulations published in Notice No. 238 (Government Gazette No. 43207) dated 6 April 2020, as amended, by Government Notice No. 252 (Government Gazette No. 43279) of 5 May 2020, Government Notice No. 500 (Government Gazette No. 43707) of 11 September 2020, Government Notice No. 678 (Government Gazette No. 43945) of 27 November 2020 and Government Notice No. 165 (Government Gazette No. 44374) of 31 March 2021.

The ICT COVID-19 National Disaster Regulations were published in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“ICASA Act”) and sections 4(1) and (7)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended and having considered the Electronic Communications, Postal and Broadcasting Directions issued by the Minister of Communications and Digital Technologies in terms of Regulation 10(8) of the Disaster Management Act, No. 57 of 2002, in Notice No. 417, Government Gazette No. 43164 dated 26 March 2020.

A copy of this Notice will be made available on the Authority’s website at <http://www.icasa.org.za> and in the Authority’s Library at No. 350 Witch-Hazel

Avenue, Eco Point Office Park, Eco Park, Centurion between 09h00 and 16h00, Monday to Friday.

Written representations on the review of the ICT COVID-19 National Disaster Regulations must be submitted to the Authority by no later than 16h00 on 7 May 2021 by hand delivery or electronically in word and signed pdf versions and marked specifically for attention Mr Davis Kgosimolao Moshweunyane at the following Delivery address: **No. 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion** or email address: Covid19regulations@icasa.org.za

Enquiries should be directed to Mr Davis Kgosimolao Moshweunyane between 10h00 and 16h00, from Monday to Friday at Covid19regulations@icasa.org.za

No late representations will be considered, nor any extension be granted.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library and ICASA's website.

At the request for confidentiality by any person who submits written representations pursuant to this notice, the Authority may determine that such representations or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.



Dr Keabetswe Modimoeng

Chairperson

22 /04/2021

Introduction

- 1.** Following a pronouncement declaring a national state of disaster made by the State President, His Excellency Mr. Cyril Ramaphosa, the Minister of Cooperative Governance and Traditional Affairs, promulgated regulations in line with section 3 of the Disaster Management Act, 2002 (Act No. 57 of 2002), as published in Government Gazette No. 43096 on 15 March 2020 (“Disaster Regulations”).¹

- 2.** Subsequently, the Minister of Communications and Digital Technologies, issued policy directions on Electronic Communications, Postal and Broadcasting under Regulation 10 (8) of the Disaster Regulations, published on 26 March 2020 (Government Notice. 318 published in Government Gazette No. 43107).

- 3.** Pursuant to the outbreak of the Coronavirus pandemic in South Africa, the Authority initiated a consultation process with interested parties on the regulatory measures/ relief which ICASA ought to consider for the electronic communications, broadcasting and postal sectors in response to the pandemic.

- 4.** Consequently, on 6 April 2020, the Authority published the Information and Communications Technology Covid-19 National Disaster Regulations (“Covid-19 Regulations”) wherein radio frequency spectrum (“RFS”) in the 700MHz, 800MHz, 2300MHz, 2600MHz and 3500MHz (“IMT”) bands were made available for licensing temporarily, including the use of Television Whitespaces.

¹ The Disaster Regulations have subsequently been amended in terms of section 27 (7) of the Disaster Management Act, 2002 (Act No. 57 of 2002).

5. The purpose of the Covid-19 Regulations is to prescribe minimum standards that Licensees must adhere to only during the subsistence of the National State of Disaster in order to –
 - (a) facilitate the dissemination of information required for dealing with the National Disaster;
 - (b) enable the facilitation of the national response to the National Disaster and post-disaster recovery and rehabilitation;
 - (c) enable implementation of measures that may be necessary to prevent an escalation of the National Disaster or to alleviate, contain and minimise the effects of the National Disaster; and
 - (d) ensure that there is a continuation of the provision of services in the Republic.
6. The Covid-19 Regulations were prescribed when the country was placed on Covid-19 lockdown period and subsequently when the Alert level system was introduced. The country is currently on Alert level 1, wherein several economic activities have been allowed to resume and operate. To this end, it is prudent for the Authority to review the measures prescribed in terms of the Covid-19 Regulations.

Purpose of this Notice

7. The purpose of this notice is to invite written representations from interested parties and members of the public on the review of the Covid-19 Regulations regarding the issues highlighted below. The representations will assist the Authority to review the Covid-19 Regulations.

Issues for consultation

8. Temporary radio frequency spectrum licences

- 8.1 The objective of the Covid-19 Regulations is, amongst others, to enable licensees to deal with the anticipated rise in demand for network capacity or data services and enhance their current services as a result of the Covid-19 pandemic.

- 8.2 In terms of regulation 6 of the Covid-19 Regulations, the IMT bands were made available for temporary assignment to qualified licensees.
- 8.3 The radio frequency spectrum licences were valid until 30 November 2020. The date of 30 November 2020 was based on the anticipation that the Authority's pending process to license available RFS in the IMT bands would be finalised by the end of December 2020. This would have allowed the seamless transition of temporary RFS in the IMT bands to permanent use via the spectrum auction process.
- 8.4 However, due to the impact of Covid-19 pandemic, the Authority resolved that the timelines for conducting the auction of available RFS in the IMT bands be moved from December 2020 to 31 March 2021.
- 8.5 On 8 March 2021, the Authority was interdicted from proceeding with the spectrum Auction Process, pending the final determination of the order sought in Part C of the Telkom and e.tv review application. As a result, the Auction did not take place by 31 March 2021.
- 8.6 On 31 March 2021, the Authority extended the expiry date of temporary radio frequency spectrum licences, from 31 March 2021 to 31 May 2021² – after considering the requests for extension from interested parties. The period of two months interim extension was informed, *inter alia*, by the need for the Authority to conduct a comprehensive review of the Covid-19 Regulations, including the radio frequency spectrum extensions, local television content obligations waiver, competition impact, pro-consumer offerings and the impact of the National State of Disaster, while expediting ICASA's appeal process on the formal spectrum licensing court interdict – during the two months' extension period.
- 8.7 The Authority does not intend to further extend the expiry date of the temporary radio frequency spectrum licences beyond 31 May 2021 due

² Regulation 6(7).

to the issues raised in the pending litigation and the interim interdict which has been granted against it under the Pretoria High Court case number: 66778/2020.

8.8 Licensees are required to pay pro-rated radio frequency spectrum licence fees in terms of the Radio Frequency Spectrum Licence Fees Regulations, 2010, for the use of temporary spectrum assignments.³

8.9 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Whether the Authority should consider further extending the duration of temporary radio frequency spectrum licences beyond 31 May 2021 despite the issues raised in the pending litigation and the interdict which has been granted against it.
- (b) The appropriate extension period.
- (c) The spectrum fees which should be applicable to the extension period.
- (d) Competition impact and proposed remedies, if any, of the further extension of temporary radio frequency spectrum licences.
- (e) Consumer benefits in respect of spectrum obligations that the Authority should consider regarding further extension.

9. Spectrum pooling arrangements

9.1 Licensees are permitted to share radio frequency spectrum assigned to alleviate the challenges of network capacity. Spectrum sharing agreements are submitted to ICASA for approval in terms of the Radio Frequency Spectrum Regulations, 2015.⁴

9.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Spectrum sharing/ pooling arrangements on a temporary basis which ICASA should consider.

³ Regulation 6(5).

⁴ Regulation 6(10)-(12).

- (b) Competition impact and proposed remedies, if any, which ICASA should consider regarding the spectrum sharing arrangements.
- (c) Consumer benefits in respect of spectrum obligations that the Authority should consider regarding the spectrum sharing arrangements.

10. Obligations relating to IMT Radio Frequency Spectrum licensees

10.1 Licensees with access to IMT radio frequency spectrum assignment are obliged to, *inter alia*, connect virtual classroom platforms to support virtual teaching for 14 months from the deployment of their solutions, provide free SMS to their subscribers regarding public announcements in relation to Covid-19 management, and notifications of all announcements by the Minister of Health or the Presidency.⁵

10.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Consumer benefits in respect of spectrum obligations, including reducing cost to communicate, which the Authority should consider regarding further extension.

11. Type approval relaxation measures

11.1 Temporary Type approvals are valid for a period of three (3) months after termination of the National State of Disaster.⁶

11.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) The validity period of temporary Type Approval authorisation.
- (b) Decommission period for temporary Type Approved equipment.

⁵ Regulation 6(13), (14), (16) and (17).

⁶ Regulation 5(10)-(11).

12. Complaints resolution

12.1 Licensees are exempt from resolving complaints within the prescribed time frames.⁷

12.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Timelines required to resolve complaints in light of the eased lockdown restrictions.

13. Tariffs and Fees

13.1 Tariffs may be lodged with the Authority one day prior to the launch.⁸

13.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Timelines required to file tariffs and fees in light of the eased lockdown restrictions.

14. Deployment of Electronic Communications Facilities

14.1 Licensees are required to notify ICASA regarding new installations of electronic communications facilities on their networks within seven days.⁹

14.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Timelines for submission of notifications to ICASA regarding new installations of electronic communications facilities.

⁷ Regulation 4(1)-(2).

⁸ Regulation 4(3)-(5).

⁹ Regulation 4(19).

15. Zero-rating services

15.1 All Electronic Communications Services and Electronic Communications Network Service licences are required to zero-rate access to all educational sites upon approval by the Department of Basic Education and the Department of Higher Education and Training; and zero-rating all Covid-19 sites upon approval by the Department of Health.¹⁰

15.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Further considerations the Authority should take into account with respect to zero-rating.

16. Broadcasting Performance Period

16.1 The performance period during the National State of Disaster is from 7h00 to 21h00.¹¹

16.2 **The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:**

- (a) Implications of the performance period as provided in the Covid-19 Regulations.
- (b) The performance period in light of the eased lockdown restrictions.

17. Programme Syndication

17.1 Programme syndication during the National State of Disaster must not exceed 45% per week.¹²

¹⁰ Regulation 6(14A) and (15).

¹¹ Regulation 4(7)-(8).

¹² Regulation 4(9)-(10).

17.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) The programme syndication percentage in light of the eased lockdown restrictions.

18. Quarterly submission of programming logs and recordings to ICASA

18.1 During the National State of Disaster, the requirement for licensees to submit recordings is suspended.¹³

18.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Suspension of submission of logs and recordings to ICASA in light of the eased lockdown restrictions.

19. Television Broadcasting Services to Persons with Disabilities

19.1 During the National State of Disaster, TV Broadcasters, except Community TV broadcasters must use sign language interpretation in at least 50% of news broadcast during prescribed times and must ensure that all media briefings by the National Command Council broadcast coverage include a sign language interpreter.¹⁴

19.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Broadcast coverage requirements during the National State of Disaster.

20. Submission of Applications

20.1 During the National State of Disaster, the requirement to submit hardcopies of applications is suspended. Subscription Broadcasting

¹³ Regulation 4(11)-(12).

¹⁴ Regulation 4(16)-(18).

Licensees may submit their channel authorisation application four days prior to the launch.¹⁵

20.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Suspension of submission of hard copies to ICASA in light of the eased lockdown restrictions.
- (b) Timelines for Subscription Broadcasting Service Licensees to submit channel authorisation applications to ICASA.

21. Local Content Obligations

21.1 Television broadcasters are exempted from compliance with the local television content quotas, specific advertising and programming requirements during the National State of Disaster. In contrast, sound broadcasters are exempted from compliance with specific programming requirements and promises of performance but must comply with the local content music quotas.¹⁶

21.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Whether ICASA should review the above exemptions.
- (b) Other considerations that the Authority should take into account.

22. Community Broadcasting Services

22.1 Community Broadcasting Service licensees are exempt from holding community meetings or AGMs until the National State of Disaster is terminated.¹⁷ The Authority has also suspended the prescribed timelines to consider Community Broadcasting Services licence applications until upon expiry of 14 working days after the termination of the National

¹⁵ Regulation 4(13)-(15).

¹⁶ Regulation 4(8A)-(8D).

¹⁷ Regulation 4(12A)-(12C).

State of Disaster.¹⁸ During the Covid-19 alert levels, the Authority only considers Special Event applications intended for Covid-19 related programming.¹⁹

22.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Suspension of the requirement for community broadcasting service licensees to hold community meetings or AGMs in light of the eased lockdown restrictions.
- (b) Suspension of regulation 4(6) of the Community Broadcasting Services Regulations, i.e. 90-day period for ICASA to consider community broadcasting service pre-registration notices.
- (c) Suspension of the consideration of other Special Event applications other than Covid-19 related programming.

23. Postal Services

23.1 The South African Post Office is required to make available its national address system to law enforcement agency or any other organ of state to track and trace people infected with Covid-19.²⁰

23.2 The Authority would like the written representations, including the reasons thereof, to address the following, amongst others:

- (a) Other considerations that ICASA should consider with respect to postal services (both reserved and unreserved postal services).

¹⁸ Regulation 4(14A)-(14B).

¹⁹ Regulation 4(15A) –(15B).

²⁰ Regulation 7.