IN THE HIGH COURT OF SOUTH AFRICA **GAUTENG DIVISION, PRETORIA**

CASE NO .: 49920 /21

In the matter between:

TELKOM SA SOC LIMITED

Applicant

and

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

First Respondent

CHAIRPERSON: INDEPENDENT COMMUNICATIONS **AUTHORITY OF SOUTH AFRICA**

Second Respondent

MINISTER OF COMMUNICATIONS AND **DIGITAL TECHNOLOGIES**

Third Respondent

VODACOM (PTY) LIMITED

Fourth Respondent

MOBILE TELEPHONE NETWORKS (PTY) LIMITED

Fifth Respondent

LIQUID TELECOMMUNICATIONS **SOUTH AFRICA (PTY) LIMITED**

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GOUTENCO O'VISION, PRETORIA PRIVATE BAG, PHIVAATSA SIXth Respondent

SOUTH AFRICA COMMUNICATIONS FORUM

Respondent

MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

SUB AFRIKA GAUTENG AT VELING, PRETONIA ESPONDENT

. W. MUTHU

NOTICE OF MOTION

TAKE NOTICE THAT the applicant will apply to the above Honourable Court for relief in the terms set out below:

PART A

- The ordinary times, forms and service prescribed in Rule 6 of the Uniform Rules be dispensed with, and the relief sought in Parts A and B be considered urgently in accordance with the provisions of Rule 6(12) of the Uniform Rules of Court.
- 2 Pending the final determination of the order sought in Part B, the applicant seeks the following relief:
- 2.1 An order interdicting ICASA from requiring that current holders of the existing temporary radio frequency spectrum licences cease using such temporary radio frequency spectrum licences with effect from 30 November 2021, or any steps related thereto.
- 2.2 An order directing the first respondent to extend the licensing of the temporary radio frequency spectrum pending the final determination of Part B:
- The consideration and determination of the relief sought in Part B hereof be made on an expediated basis in terms of the direction by the Judge-President or Deputy Judge-President of this Honourable Court.
- The costs of part A be reserved for determination with part B.
- 5 Granting further and/or alternative relief.

- The relief sought in Part A be set down for hearing on 26 October 2021.
- 7 If you elect to oppose the relief sought in Part A, you must:
- 7.1 give notice of your intention to oppose to the applicant's attorneys on or by 17h00 on 8 October 2021 and, in the notice, appoint an address within 15 kilometres of the office of the Registrar of this court at which you will accept notice and service of all documents in these proceedings; and
- 7.2 deliver any affidavits in answer to the allegations of the applicant on or by 17h00 on 15 October, and the applicant shall, if so advised, file its replying affidavits within 3 days thereafter.

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING OF PART A ACCORDINGLY

PART B

It is declared that the decision of the first respondent not to legislate or allow for further extensions of the validity of the temporary radio frequency spectrum licences during the declaration of the national state of disaster in terms of the Disaster Management Act 57 of 2002 or pending the finalisation of the International Mobile Telecommunications spectrum licensing process, which ever event occurs first, is unlawful and set aside.

- 9 That the first respondent pay the costs of this application and that such other respondent/s as oppose/s this application pay/s the costs of this application jointly and severally together with the first respondent.
- 10 Granting further and/or alternative relief.
- 11 **TAKE NOTICE FURTHER THAT** the applicant will rely on the accompanying affidavit of Dr Siyabonga Mahlangu in support of this application.
- 12 **TAKE NOTICE FURTHER THAT** the applicant has appointed the address of its attorneys of record mentioned below at which it will accept notice and service of all documents in these proceedings.

13 TAKE NOTICE FURTHER THAT:

- The first respondent is called upon, in terms of Uniform Rule 53(1)(a), to show cause why the decision referred to in paragraph 1.1 above should not be declared unlawful and set aside.
- In accordance with Uniform Rule 53(1)(b), the applicant calls upon the first respondent to despatch to the registrar within 15 days of the receipt of this notice of motion, the record of the decision sought to be reviewed and set aside, together with reasons for the decision, and notify the applicant's attorneys when it has done so.

- In terms of Uniform Rule 53(4), the applicant reserves the right to amend, add to or vary the terms of its notice of motion and supplement its founding affidavit within 10 days after the registrar has made the record available to it.
- 14 **TAKE NOTICE FURTHER THAT** if you wish to oppose part B of this application, you must:
- 14.1 within 5 days of service of this notice of motion, give notice of your intention to oppose to the applicant's attorneys and, in the notice, appoint an address within 15 kilometres of the office of the Registrar of this court at which you will accept notice and service of all documents in these proceedings; and
- 14.2 within 15 days after the filling of the applicant's supplementary affidavit, or expiry of the period referred to in Rule 53(4)(b) of the Uniform Rules of Court, deliver any affidavits in answer to the allegations of the applicant.

DATED AT **SANDTON** ON THIS THE 5th DAY OF **OCTOBER** 2021.

WERKSMANS ATTORNEYS

Attorneys for the Applicant

The Central

96 Rivonia Road

Sandton

Tel: 011 535 8145 / 011 535 8152 Fax: 011 535 8645 / 011 535 8753

E-mail: cmanaka@werksmans.com / krapoo@werksmans.com

Ref: Mr C Manaka / Ms K Rapoo/TELK6044.414

c/o MABUELA ATTORNEYS

4TH Floor Charter House 179 Bosman Street

Pretoria

TO:

THE REGISTRAR OF THE ABOVE HONOURABLE COURT PRETORIA

AND TO:

FIRST RESPONDENT INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

350 Witch-Hazel Ave Eco-Park Estate

Centurion

SECOND RESPONDENT
THE CHAIRPERSON, INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

350 Witch-Hazel Ave Eco-Park Estate Centurion

THIRD RESPONDENT
MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES

iParioli Office Park

1166 Park Street

Hatfield

Pretoria

C/O The Office of the State Attorney: Pretoria

Ground Floor

Salu Building

316 Thabo Sehume Street

Pretoria

FOURTH RESPONDENT VODACOM (PTY) LIMITED

Vodacom Corporate Park 082 Vodacom Boulevard Voda Valley Midrand Gauteng

FIFTH RESPONDENT MTN (PTY) LIMITED

216 14th Avenue Fairland Roodeport Gauteng

SIXTH RESPONDENT LIQUID TELECOMMUNICATIONS SOUTH AFRICA (PTY) LIMITED

401 Old Pretoria Main Road Midrand Gauteng

SEVENTH RESPONDENT SOUTH AFRICA COMMUNICATIONS FORUM

Main Street & Orchard Avenue Columbus building Unit B2 Bordeaux Randburg Gauteng

EIGHTH RESPONDENT MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

87 Hamilton Street
Arcadia
Pretoria
C/O The Office of the State Attorney: Pretoria
Ground Floor
Salu Building
316 Thabo Sehume Street
Pretoria

IN THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA

CASE NO .: 49420 / 21

In the matter between:

TELKOM SA SOC LIMITED

Applicant

and

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First Respondent

CHAIRPERSON: INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

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MOBILE TELEPHONE NETWORKS (PTY) LIMITED

Fifth Respondent

LIQUID TELECOMMUNICATIONS SOUTH AFRICA (PTY) LIMITED

Sixth Respondent

SOUTH AFRICA COMMUNICATIONS FORUM

Seventh Respondent

MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

Eighth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

DR SIYABONGA MAHLANGU,

state under oath that:



- I am an adult male and the Group Executive: Regulatory Affairs and Government Relations of the applicant ("Telkom").
- I am authorised to represent Telkom in this application.
- The facts to which I depose are to the best of my knowledge true and correct and are within my knowledge except where it is apparent from the context that they are not.

THE PURPOSE OF THIS APPLICATION

- In the ICT COVID-19 National Disaster Sixth Amendment Regulations published in Government Gazette No. 45069 on 31 August 2021, the Independent Communication Authority of South Africa ("ICASA") advised the public that:
- 4.1 no temporary radio frequency spectrum licences would be valid after 30 November 2021;
- 4.2 any licensee assigned with such radio frequency spectrum must wind up their operations, on or before 30 November 2021; and
- 4.3 ICASA would no longer be extending the utilisation of the radio frequency spectrum beyond the 30th of November 2021 ("the Decision").

- The temporary radio frequency spectrum licences ("the licences") were issued in terms of the ICT COVID-19 National State of Disaster Regulations ("the Regulations") to various holders of Electronic Communications Network Services licences ("the network operators") at the advent of the COVID-19 national disaster to enable the network operators to assist the country to respond to the pandemic.
- The rationale and need for temporary spectrum persist. Telkom seeks an urgent order to prevent the disruption in the provision of services that will eventuate if the Decision is allowed to take effect.
- 7 The relief sought by Telkom in this application comprises of two parts, namely:
- 7.1 In **Part A**, Telkom seeks orders that ICASA:
- 7.1.1 be prevented from requiring that current holders of the existing temporary radio spectrum licences cease using such temporary spectrum licences with effect from 30 November 2021.
- 7.1.2 extend the licencing of temporary radio frequency spectrum pending the outcome of Part B; and
- 7.2 In <u>Part B</u>, Telkom seeks to review and set aside ICASA's decision not to provide further extensions of the validity of temporary radio frequency spectrum licences for the duration of the COVID-19 National disaster as

contemplated in the Disaster Management Act ("**DMA**") pending the finalisation of the permanent spectrum licencing process while the DMA persists.

THE PARTIES

- The Telkom is **TELKOM SA SOC LIMITED**, a public company registered and incorporated in terms of the company laws of South Africa. Telkom's principal place of business is situated at Highveld Techno Park, 61 Oak Avenue, Centurion, Gauteng. Telkom was granted two temporary radio frequency spectrum licences by ICASA. The first licence, granted on 20 April 2020, was for the IMT700, IMT800, IMT2600 and IMT3500. The second licence, granted on 24 April 2020, was for the IMT2300. A copy of the licences are annexed hereto marked "**FA1.1**" and "**FA1.2**.
- The first respondent is the INDEPENDENT COMMUNICATIONS AUTHORITY
 OF SOUTH AFRICA, a juristic person established in terms of section 3(1) of
 the Independent Communications Authority Act 13 of 2000 ("ICASA Act").
 ICASA's registered offices are situated at 350 Witch-Hazel Ave, Eco-Park
 Estate, Centurion. ICASA is an organ of state that exercises its powers and
 performs its duties as determined by the ICASA Act, the Electronic
 Communications Act 36 of 2005 ("ECA") and other related legislation and policy
 frameworks. ICASA regulates the electronic communications sector in the
 public interest. This includes the licensing of radio frequency spectrum.

- The second respondent is the current Chairperson of ICASA, Dr Keabetswe Modimoeng N.O. ("the Chairperson") who is cited herein in his official and representative capacity as the head of the ICASA Council which is the entity through which ICASA acts as provided for in section 3(2) of the ICASA Act.
- The third respondent is the MINISTER OF COMMUNICATIONS AND DIGITAL TECHNOLOGIES ("Minister"). She is cited herein as the Minister responsible for the electronic communications sector in South Africa and a possible interested party. The Minister's offices are situated at iParioli Office Park, 1166 Park Street, Hatfield, Pretoria. This application will also be served on the Office of the State Attorney, Pretoria, Ground Floor, SALU Building, 316 Thabo Sehume Street, Pretoria.
- The fourth respondent is **VODACOM (PTY) LIMITED** ("**Vodacom**"), a private company registered and incorporated in terms of the company laws of South Africa. The fourth respondent's registered office and principal place of business is situated at Vodacom Corporate Park, 082 Vodacom Boulevard, Voda Valley, Midrand, Gauteng.
- 13 The fifth respondent is **MOBILE TELEPHONE NETWORKS (PTY) LIMITED**("**MTN**"), a private company registered and incorporated in accordance with the company laws of South Africa. MTN's registered office and principal place of business is situated at 216 14th Avenue, Fairland, Roodepoort, Gauteng.

- The sixth respondent is **LIQUID TELECOMMUNICATIONS SOUTH AFRICA**(PTY) LIMITED ("Liquid"). Liquid, formerly known as Neotel, is a private company that has been registered and incorporated in accordance with the company laws of South Africa. It's registered office and principal place of business is at 401 Old Pretoria Main Road, Midrand, Gauteng.
- The fourth to sixth respondents are entities that are licensed in terms of the ECA to provide a variety of electronic communications network services and electronic communications services to members of the public. The fourth to sixth respondents are cited herein by virtue of them being holders of temporary radio frequency spectrum licences issued in terms of the Regulations and which are impacted by the Decision. The fourth to the sixth respondents have a material interest in the outcome of this application.
- The seventh respondent is the **SOUTH AFRICA COMMUNICATIONS FORUM**("SACF"), a non-profit industry association within the Information and Communications Technology ("ICT") sector. The SACF is a representative forum for stakeholders within the South African ICT Sector. Its offices are located at Central Park Office Suite, Corner of Main Street & Orchard Avenue, Columbus Building, Unit B2, Bordeaux, Randburg, Gauteng.
- The Eighth respondent is the MINISTER FOR COOPERATIVE

 GOVERNANCE AND TRADITIONAL AFFAIRS (also referred to as 'Minister

 for CoGTA'). The eighth respondent is cited herein because of her position as

 the Minister responsible for the administration and implementation of the DMA.

While no relief is sought against the Minister, she is cited for the possible interest she may have in the determination of this matter insofar as it impacts on the management of the state of national disaster. The Minister's offices are situated at 87 Hamilton Street, Arcadia, Pretoria. This application will also be served on the Office of the State Attorney, Pretoria, Ground Floor, SALU Building, 316 Thabo Sehume Street, Pretoria.

JURISDICTION

The abovementioned Honourable Court has jurisdiction to adjudicate this application by virtue of the first and second respondent, from whom the relief is sought, being located within the area of jurisdiction of this Honourable Court.

OVERVIEW

- 19 The structure of this affidavit is as follows:
- 19.1 Section A: Background facts
- 19.2 Section B: The regulatory and policy framework guiding the licensing of temporary radio frequency spectrum
- 19.3 Section C: The urgent need for continued temporary radio frequency spectrum



19.4 Section D: The effect of the Covid-19 pandemic on Telkom and response thereto

19.5 Section E: Interim interdict requirements

19.6 Section F: **U**rgency

19.7 Section G: Preliminary grounds of review

A: BACKGROUND FACTS

- The year 2020 began with a major disease, COVID-19, engulfing the world. On 30 January 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a global health emergency, and a global pandemic on 11 March 2020. It disrupted the trade, education, health and many facets of social life. Many lives were lost and continue to be lost. South Africa was not spared. Around February 2020, South Africa recorded its first case of COVID-19. The disease spread rapidly in the country.
- In response to the spread of the virus and its devastating impact, the government of the Republic declared a national state of disaster in terms of the DMA. The national state of disaster is still in force.
- On 18 March 2020, acting in terms of the powers vested in her by the DMA, the Minister for CoGTA published regulations to ensure that the government takes

'steps necessary to prevent the escalation of the disaster or to alleviate, contain and minimize the effects of the disaster'. The regulations were followed by a national lockdown in terms of which the movement and gathering of people were extremely limited. The lockdown has five alert levels which indicate the extent of the restrictions in each level with the fifth level being the most severe.

- The President of the Republic and his cabinet monitor the spread and impact of the disease continuously and provide regular updates to the nation. They ease or tighten the alert level of the national lockdown depending on the extent and rate of the infection at any given time. This is mainly to mitigate the adverse effects the lockdown has on the economy and the way people conduct their lives.
- South Africa has experienced three waves of infections, i.e., the sudden upsurge in the rate of infections and associated fatalities. According to the National Institute for Communicable Diseases, the country is said to have exited the third wave of COVID-19 infections. This wave has had the highest number of recorded fatalities compared to the first two waves.
- Telkom also monitors the rate of infections and continuously obtains expert advice on the spread of the disease. I understand that the trend and the spread of COVID-19 cannot be predicted with accuracy. Thus, it is impossible to predict when the disease will ultimately be contained or when the next spike may be expected to occur or how severe it is going to be. Furthermore, COVID-19 has been mutating and producing different variants of the virus. This has raised



debates amongst experts on the efficacy of some of the vaccines that are being rolled out globally.

I understand too that some countries are currently experiencing the fourth wave. Experts speculate that South Africa may experience a fourth wave in the very near future. They attribute this view to the festivities associated with the spring and summer seasons as well as the movement of people during that time. Although this may be inconclusive, it cannot be gainsaid that the virus is still with us and the potential for its spread lurks.

It has been well documented that the COVID-19 pandemic brought about what has been colloquially termed "the new normal". The new normal is characterised by large numbers of people working and studying from home and through the use of online services and the necessitated virtual social and work gatherings in lieu of the imposed limitation of physical public gatherings. People and businesses rely on online applications to trade and interact. This requires broadband connectivity.

Most people in South Africa access broadband services through their mobile phones. According to Statista Research Department, 60.71% of people in South Africa in 2021 rely on mobile phones to access broadband services. Furthermore, a recent report from the GSMA indicated, mobile is the primary (and sometimes the only way) that people in low-and middle-income countries access the internet.

- The provision of reliable mobile broadband services includes coverage, speed, and quality of service. These are ensured through the technical deployment of networks by the licensees. Radio frequency spectrum is a major part of this. It enables the network to communicate, i.e., to transmit and receive data signals. Without appropriate spectrum, the provision of mobile broadband services is not possible. Radio frequency spectrum earmarked for mobile use is a scarce and finite resource. It is sometimes referred to as high demand spectrum.
- The development in mobile technology from the second generation (2G) to the fifth generation (5G) has seen services evolve from voice and basic data services to video, the internet of things and artificial intelligence. This means that more spectrum is now required to carry these advanced applications than when mobile telephony was introduced in South Africa.
- However, South Africa has been lagging behind the rest of the world. It has not licensed new mobile spectrum since 2005. The affected bands include 700 MHz, 800MHz, 2600MHz, and 3500MHz. The previous attempts to licence this spectrum have been mired in controversy. In the result, all the electronic communications network services have been severely constrained for years insofar as radio frequency spectrum is concerned. For example, as the fourth entrant in the provision of mobile services, Telkom does not have spectrum in the sub 1 GHz band. This spectrum has propagation characteristics that enable the efficient coverage of distance and inbuilding penetration. There was none available when Telkom began its business. Through access to 700 MHz and 800 MHz which have now been harmonized for mobile use, Telkom can

address its challenges. However, the full use of this spectrum for mobile services is hamstrung by the fact that this band is still occupied by broadcasters.

- When South Africa first experienced the COVID-19 pandemic, the network operators were in the situation that I have just outlined. These network operators had to cope with a sudden and dramatic increase in broadband traffic whilst still battling the scarcity of spectrum. I deal fully with Telkom's experience below when I address the irreparable harm that Telkom stands to suffer if the Decision is allowed to take effect.
- In Telkom's case, mobile network data traffic jumped from almost 72 Peta Bytes (PB) in March 2020 to more than 87 PB in April 2020 (1 Peta Byte amounts to 1 024 000 GB). This set a new growth baseline in the network, with four months in 2021 exceeding 85 PB by August 2021, and a new peak of 92 PB in July 2021.
- ICASA recognised the challenge faced by the operators. In a media statement dated 19 March 2020, it informed the country that it would be "engaging the sector on possible ways of radio frequency spectrum relief for the duration of the declared state of disaster to ease congestion, ensure good quality of broadband services, and enable licensees to lower the cost of access to consumers" (own emphasis). A copy of the media statement is annexed hereto marked "FA2".

B: THE REGULATORY AND POLICY FRAMEWORK GUIDING THE LICENSING OF TEMPORARY RADIO FREQUENCY SPECTRUM

- The dramatic impact of COVID-19 on the provision of mobile broadband was anticipated. Through the regulations made in terms of s27(2) of the DMA, Ministers were empowered to make directions within their areas of competence. In terms of regulation 10(8), the Minister is empowered 'to issue and vary directions, as required...to address, prevent and combat the spread of COVID-19, from time to time, as may be required'. This includes taking steps that may be necessary to prevent an escalation of the national state of disaster or alleviate, contain and minimize the effect of the national state of disaster.
- On 26 March 2020, the Minister issued the Electronic Communications, Postal and Broadcasting Directions ("**Directions**") to:
- ensure that the electronic communications industry, as an essential service, operates smoothly;
- enable electronic communications service licensees and other service providers to rapidly deploy networks and facilities as contemplated in the ECA; and
- remove obstacles that are associated with the rapid deployment of electronic communications services. A copy of the Directions is annexed hereto marked "FA3".



- In the Directions, the Minister specifically directed ICASA, as the relevant organ of State tasked with the regulation of the electronic communications and digital services sector in the public interest, to:
- 37.1 prioritise the regulatory framework application to the management and licensing of radio frequency spectrum that would allow for the implementation of the direction on an urgent basis, for the duration of the COVID-19 national disaster;
- 37.2 relax spectrum regulations to enable the temporary licensing of all available spectrum bands, including the unassigned high demand spectrum for the duration of the COVID-19 national disaster; and
- ensure that the temporary assignment of the unassigned high demand frequency spectrum is provided to licensees that will be able to implement and use assigned frequency spectrum for the duration of the COVID-19 national disaster on an expedited basis.
- On 6 April 2020, consistent with and as required by the Directions, ICASA promulgated the Regulations. On 22 April 2021, ICASA explained in a media statement that the temporary licensing of high demand spectrum was "aimed at mitigating the impact of the National State of Disaster, following the outbreak of COVID-19 in 2020, mainly by easing network congestion, maintaining good quality of broadband services, and enabling licensees to lower the cost of

access to consumers" (own emphasis). A copy of the media release is annexed hereto marked "FA4".

- Regulation 2(b) states that the temporary licensing of radio frequency spectrum is meant to "enable the facilitation of the national response to the National Disaster and post-disaster recovery and rehabilitation" (own emphasis).
- These Directions and Regulations, however, should not be read in isolation as they are ultimately informed by the objects and purpose of the primary electronic communications legislation, the ECA. In the context of temporary radio frequency spectrum licensing, the following purposes are of paramount importance:
- 40.1 the efficient use of the radio frequency spectrum;
- the prevention of undue interference in the commercial activities of licensees while taking into account the electronic communications needs of the public;
- 40.3 the promotion of stability in the ICT sector; and
- 40.4 ensuring information security and network reliability.



The objects ultimately form part of ICASA's obligations as a regulator and mandate how it should conduct itself, especially during the COVID-19 national disaster and thereafter.

C: THE URGENT NEED FOR CONTINUED USE OF THE TEMPORARY RADIO FREQUENCY SPECTRUM

- Temporary radio frequency spectrum is a critical element in meeting the various capacity requirements of consumers, businesses, government, students and learners during the COVID-19 pandemic. It is generally recognised that ICT is a key support system to government's fight against the COVID-19 pandemic and the overall functioning of the country.
- The need for the licensing of temporary radio frequency spectrum licences was adequately expressed by ICASA during the litigation brought by Telkom and e.tv under case number 66778/2020, to Review and set aside ICASA's decision to publish the Invitation to Apply for radio frequency spectrum in the IMT700, IMT800, IMT2600 and IMT3500 published as Government Notice 535 of 2020 in Government Gazette Number 43768 of 2 October 2020, and the Invitation to Apply for an individual electronic communications network services and Radio Frequency Spectrum license for the purpose of operating a Wireless Open Access Network published as Government Notice 534 of 2020 in Government Gazette 43767 of 2 October 2020 ("the ITAs").

In its affidavit in support of its application in terms of Section 18(2) of the Uniform Rules of Court, the second respondent, on behalf of ICASA stated the following:

"The COVID-19 pandemic has forced the general public to rely on the electronic communication services to access a long list of services such as health services and related information, banking services and general electronic communication services. In addition, people are generally working from home and this is not going to slow down in the near future. All of these require high demand spectrum to enable the majority of the people to access these services without any difficulties.

The negative consequences of the further delay in auctioning high demand spectrum are going to be unprecedented when regard is had to the impact of the COVID-19 pandemic on the use of the electronic communication services. The more people work from home, study from home, receive lectures from home, bank from home, buy things from home using electronic communications facilities, the more stretched the available spectrum capacity is going to be and that is going to result in poor quality services to the detriment of the general public.

The COVID-19 pandemic has increased the demand for the use of electronic communication services and this requires additional spectrum to be freed. There is a general acceptance that the third wave of COVID-19 will hit the country in the near future and that the COVID-19 pandemic itself is not going to be eliminated anytime soon. The government will not be able to vaccinate 67% of the population by the end of the year as originally intended. All of these indicate that there is going to be more reliance on electronic communication services and the ability to provide such services largely depends on the availability of spectrum....". (own emphasis)

The above emphasised sentiments of ICASA have been supported by the various mobile networks, including Telkom. In Telkom's submission to ICASA in response to the opportunity to comment on the review of the Regulations back in April 2021, Telkom highlighted some of the following aspects that support the need for the extension of the temporary radio frequency licences:

- The average monthly data traffic on Telkom Mobile's network grew more than 70% year-on-year compared with pre-COVID-19. Data use of Telkom's network increased 20% from March 2020 to April 2020 at the start of the national lockdown and this set a new data consumption baseline in the network. Data consumption peaked during the third wave. The huge increase in data demand impacted the user experience and overall network quality.
- The application of temporary spectrum has had a positive impact on Telkom's network, which was negatively impacted by the traffic patterns occasioned by the lockdown which added further pressure on Telkom's network both in respect of coverage and capacity.
- The removal of the temporary spectrum, while the COVID-19 National Disaster is still ongoing, would have a catastrophic impact on Telkom's network performance and therefore its customers who rely on the network for business, commercial, educational and service delivery purposes.
- The data and information expressed in Telkom's submission is still of significant importance and relevance because the volume and forecast of data traffic and demands on Telkom's network has normalized at a level higher than before the COVID-19 pandemic. A copy of Telkom's non-confidential submission is annexed hereto marked "FA5".

Furthermore, coverage in underserviced environments has increased due to the deployment of sub 1 GHz per province and per area type. There has been coverage improvement nationally, with noticeable changes in affected and underserviced areas such as Mpumalanga, North West and the Northern Cape. The coverage improvements allowed Telkom to utilize current spectrum, in combination with the additional capacity spectrum, to realise faster download speed increases in affected areas. This means better network coverage and benefit to customers in those areas.

D: THE EFFECT OF THE COVID-19 PANDEMIC ON TELKOM AND RESPONSE THERETO

- Telkom has a significant staff complement, and throughout the pandemic, the trend of the COVID-19 cases within Telkom have mirrored those in the country, from inception and through all the three waves.
- As at 19 September 2021, there were 1914 cases, of which 114 are active cases, 60 people have passed away and 1700 have recovered. The third wave led to a high number of deaths, where Telkom experienced 25 deaths between June and August 2021, which is significantly higher than the previous waves.
- Although the country has, by most accounts, exited the third wave, the COVID-19 pandemic continues to have a significant impact on people's lives, families and communities.

- To date, Telkom has taken the following measures to protect its employees:
- 51.1 Enabled 80% of employees to work from home;
- 51.2 Provided free testing and counselling to employees and their families through our wellness partner, ICAS;
- Telkom tightly controls access to its buildings. All employees, contractors and visitors are issued service permits to access all Telkom sites. In the event that the person wanting to gain access does not have the required valid essential service permit, access is denied.
- Telkom also plays an active role in curbing the spread of the disease and addressing its devastating impact on the economy. To this end, Telkom has:
- Reduced data prices and increased speeds and broadband bundle sizes;
- 52.2 Granted payment holidays and extended payment terms during levels 4 and 5 lockdown;
- Offered SMMEs free access to the new Yep! marketplace and desktop applications since the launch of Yep! in May 2020;



- 52.4 Developed a COVID-19 and IT management solution in partnership with others;
- 52.5 Donated 1 500 devices and data to the Department of Health to assist with the track and trace programme;
- 52.6 Implemented various obligations under relevant regulations published by ICASA and the Department of Communications and Digital Technologies.
- The effects of the COVID-19 pandemic remain of concern to Telkom, and the view of ICASA that the crisis has passed is not a reality, not only for Telkom, but for numerous other organisations and institutions, including most of the Superior Courts in the country.

E: INTERIM INTERDICT REQUIREMENTS

- I understand that Telkom, in order to be granted an interim interdict by this Honourable Court, must establish the following:
- that Telkom has, on a preponderance of possibilities, a *prima facie* right;
- that there is a well-grounded apprehension of irreparable harm should the interim relief sought not be granted and the ultimate relief is in granted in the ordinary course;

- the balance of convenience favours the granting of the interim relief sought by Telkom;
- 54.4 there is no other satisfactory or appropriate alternative remedy available to Telkom.

The prima facie right

- It is submitted that the Decision implicates at least two of Telkom's *prima facie* rights. First, Telkom has a right to an administrative action that is lawful, fair and reasonable. Telkom contends that the Decision is neither lawful, fair nor reasonable. On the contrary, the Decision is liable to be reviewed in terms of s6 of PAJA for the following reasons:
- 55.1 ICASA failed to consult the public including Telkom and its customers before it took the Decision;
- 55.2 ICASA took into account irrelevant considerations and disregarded relevant considerations; and
- The Decision is not rationally connected to the purpose for which it was taken, the purpose of the empowering legislation, and the information that is before ICASA.



- Secondly, Telkom contends that it has a *prima facie* right in terms of the ECA to a stable ICT sector and no undue interference in its commercial activities.
- As submitted above, the licence conditions and the provisions of the ECA can only be given full effect to if ICASA regulates in a manner that is consistent with the underlying legislation and policy frameworks. Should this not be met, Telkom is unable to meaningfully play its role in the promotion of ICT stability and support of commercial activities, and the larger public interest.
- It should also be noted that in the Directions, the Minister specifically stated that:
- all licensees must ensure continued service during the provision and must when requested to do so, rapidly deploy temporary communications networks and services (Directions 6.1 and 6.2); and
- the temporary assignment of the unassigned high demand frequency spectrum must be focused on those licensees that would be able to implement and use assigned frequency spectrum for the duration of the COVID-19 national disaster on an expeditious basis.

Irreparable harm

Should ICASA not be directed to extend the licensing of temporary radio frequency spectrum or refrain from requiring current holders of licences to

cease using their licences, it will have a significantly prejudicial effect on Telkom, other mobile operators, the greater public and the functioning of the national economy.

- A removal of temporarily licenced spectrum will have a major impact on Telkom's network. A reduction in network capacity will lead to decreased performance, throughput and increased latency if the temporary spectrum is no longer available;
- In addition, if the temporary assigned spectrum is no longer available, the permanently assigned spectrum will not be able to cater for the network traffic demand, which will result in severe congestion on the network and a decrease in network quality. This will particularly impact the rural provinces the most, being Mpumalanga, North West, and Northern Cape.
- Consequently, the switch off will affect the most vulnerable communities in the network and there will be no alternative solution for these communities due to limited sites and infrastructure in these rural areas.
- In a television interview conducted on 22 September 2021, contrary to the valid sentiments of ICASA as traversed elsewhere in this affidavit and the reality of the status of the licensing of spectrum for a longer term which has been in dispute, the second respondent expressed, *inter alia*, the following:

- the country is no longer in the same 'covid reality', as great progress has been made, and the country is no longer in a time of crisis;
- 63.2 ICASA is working toward a permanent licensing solution, and before the end of the week commencing 27 September 2021, a timetable for the permanent licensing of spectrum on an expedited truncated basis will be communicated, and the auction for the allocation for spectrum would be in the 'next reasonable number of months'; and
- network operators will be able to operate on their pre-pandemic capacity as the economy is gradually going back to normal, evident from there being more cars on the roads. In response to the critical question regarding demand having generally changed due to the pandemic, the second respondent dismissed the question, instead insisting that the demand is not what it was in 2020 at the commencement of the pandemic.
- On 1 October 2021, ICASA published a media statement wherein it set out the proposed "expedited licensing of IMT spectrum" schedule which outlines the plans for the licensing of high demand spectrum and the wireless open network.



The schedule for the expedited licensing of IMT spectrum provides as follows:

Key Activities	Envisaged Dates
Publication of the Information Memorandum ("IM") for Consultation	01 October 2021
Workshop on the IM	15 October 2021
Closing date for receiving public representations to the IM	01 November 2021
Publication of 2nd IM for consultation	15 November 2021
Closing date for Comments	29 November 2021
Publication of the ITA	10 December 2021
Closing date for receiving new and revised applications to the ITA	31 January 2022
Announcement of qualified bidders	21 February 2022
Start of the Auction process	01 March 2022

A copy of the media statement is annexed hereto marked "FA6".

It is evident from the proposed schedule that ICASA only intends for the auction process to commence on 1 March 2022, this is of course subject to no issues being raised in respect of the IM and the ITAs. This is despite the obvious irreversible adverse consequences that would result from the suspension of the temporary licensing of radio frequency spectrum contemplated by the Decision.

The first and second respondents appear to be operating under a misguided and indeed irrational notion that the Decision is in the public interest, notwithstanding the catastrophic consequences that will occur pending the licensing of the high-demand spectrum. This is in the face of the reality that numerous individuals and businesses, including Telkom, will be adversely impacted by the Decision, whereas there is no prejudice whatsoever if the status quo remains until the spectrum is permanently licenced on an expedited basis as contemplated. On the contrary, there will continue to be immeasurable benefit to the public and the economy from the continuation of the status quo.



The licensing of the temporary radio frequency spectrum was in response to the national state of disaster and sought to address the increased data consumption by the public and the high demand in mobile broadband services that came about as a result of the COVID-19 pandemic and the declaration of the national state of disaster generally and the concomitant lockdowns.

It is further submitted that in order to adequately address this high demand and to ultimately provide stable network and improved service offerings, additional spectrum is urgently needed on an uninterrupted, continued basis until such time that the need no longer exists through the permanent licensing of spectrum, alternatively the ends of the national state of disaster.

The licensing of temporary radio frequency spectrum is not without conditions. It requires that licensees zero rate all COVID-19 sites as identified from time to time by the Department of Health by notice in the Government Gazette. Furthermore, licensees are required to provide consumer benefits such as zero-rated access to educational sites for all public universities, technical and vocational training colleges and all public schools across the Republic of South Africa; enable small and medium businesses to connect during the COVID-19 period; enable consumers from under-serviced areas to connect; and provide data services at a reduced rate.¹

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¹ Temporary Radio Frequency Spectrum Licence paragraph 4.

It is submitted therefore that should ICASA not be interdicted, at this stage, from requiring that licensees cease using the temporary radio frequency spectrum in the short term, this will ultimately impact the larger public interest as mobile networks, such as Telkom, will not have the capacity to meet and maintain the high demand for broadband access. It will become difficult for example, to provide zero-rated services; assist schools and tertiary institutions in functioning; ensure that small and medium businesses are able to effectively meet the demands related to their various businesses; and ensure that vulnerable/underserviced communities are able to meet their day-to-day needs.

Balance of convenience

- 72 It is submitted that the balance of convenience clearly favours the relief sought by Telkom in Part A.
- Telkom cannot foresee any material prejudice of a comparable nature that will be suffered by ICASA in the event that the interim relief is granted. This submission is guided by the public interest that will be protected by the interim order and the importance of a functioning ICT sector which is reliant on the need for stability and a level of certainty in the ICT sector.
- As recently expressed by Business Leadership South Africa ("BLSA") and which I am able to confirm from my own personal knowledge and experience:



- 74.1 if ICASA proceeds with its plan to "take back the spectrum" it would be tantamount to creating "digital load-shedding";
- taking back the spectrum will force employees back to offices, exposing them to COVID-19, cut off the vulnerable from access to zero-rated services, including COVID-19 related resources;
- even under the current adjusted level-2 COVID-19 restrictions, government has encouraged people to work and study from home;
- 74.4 the decision undermines the economic recovery agenda;
- 74.5 the temporary spectrum has been "absolutely critical to minimising the impact of lockdowns and the pandemic".
- 74.6 It would have been impossible for people to remain connected without it and many more jobs would have been lost.
- To the extent that ICASA argues that the interim relief sought will hinder the process of the permanent licensing of spectrum, this is misplaced. ICASA will still be able to continue with its obligations in this regard. In any event, if the use of the temporary spectrum is suspended, the spectrum concerned would not be of any immediate use to ICASA and would remain dormant and unused by any entity in a beneficial manner until such time that ICASA has finalised the permanent licensing of the spectrum. In other words, it is not the case that

ICASA needs to re-assign the temporary spectrum to any entity in the immediate term.

No other satisfactory or appropriate remedy

- On 8 September 2021, Telkom addressed a letter (the contents of which I confirm) to ICASA, setting out grave concerns regarding the Decision. Telkom requested that ICASA confirm that the temporary radio frequency spectrum licences will not be terminated as contemplated in ICASA's notice, by no later than 10 September 2021. The contents of the letter should be read as if specifically traversed herein. A copy of the letter is annexed hereto marked "FA7".
- On or about 10 September 2021, ICASA responded to Telkom's 8 September letter, and advised that it is closely monitoring all aspects of the pandemic and its effect on the industry and has taken the Decision. ICASA further stated that it is currently focused on undertaking a process to licence spectrum on a permanent basis. A copy of the letter is annexed hereto marked "FA8".
- On 16 September 2021, Telkom addressed a letter to ICASA through its attorneys, Werksmans Attorneys, reiterating the grave concerns regarding the Decision and further requesting the information that informed the Decision as more fully outlined in the letter. The contents of the letter should be read as if specifically traversed herein. A copy of the letter is annexed hereto marked "FA9"

- ICASA did not respond to the 16 September 2021 letter as requested. The second respondent in his interview of 22 September 2021, however, advised that a truncated timetable will be published by the end of the week commencing on 27 September 2021, for the licensing of spectrum on a permanent basis.
- In these circumstances, Telkom's only option is to approach the Honourable Court to protect its own interests, and those of the public at large, as the Decision is unreasonable, irrational, and procedurally unfair.

F: URGENCY

- The determination of this application is urgent.
- As stated above, in response to Telkom's letter dated 8 September 2021, ICASA advised that it was focusing on the permanent licensing spectrum. In addition, the second respondent in an interview held on 22 September 2021, informed the public that the timetable dealing with the permanent licensing of spectrum would be released in the week commencing on 27 September 2021. The timetable was subsequently published on 1 October 2021.
- In terms of the timetable published by ICASA on 1 October 2021, ICASA only anticipates commencing with the IMT spectrum auction on 1 March 2022, on the assumption that the proposed timetable will be strictly adhered to. Therefore, at the very least, from 1 December 2021 to 1 March 2022, there will be severe instability in the ICT sector nationally, with irreversible

consequences. This is notwithstanding that, should the status quo before the Decision remain, i.e., further extension of the temporary radio frequency spectrum licences until such time the permanent licensing of spectrum, alternatively the end of the national state disaster, then stability will be maintained, and no stakeholder will be prejudiced.

- Telkom has brought this application as soon as it could, following the publication of the timetable, which confirms the irrationality and unreasonableness of the Decision.
- Furthermore, the interim interdict should be granted urgently because it is envisaged that the mobile network operators, including Telkom, would have no option but to commence the process of winding down, which process will take approximately 7 or more months as it involves, amongst others, traffic, coverage and throughput analysis, database alignment, preparation of scripts, and execution of the shutdown of the relevant parts of the radio access network, in order to have completely migrated the temporary radio frequency spectrum that they have held by no later than 30 November 2021. An annexure detailing the full process is annexed hereto marked "FA10".
- As is evident from annexure "FA10", the process of efficiently unwinding, will require an estimated minimum of 7 or more months to avoid catastrophic consequences of a sudden switch off.



- If the matter is not addressed urgently, the public will suffer significant prejudice as of 30 November 2021 due to a state of network congestion. A confirmatory affidavit deposed to Mr Hugo van Zyl is annexed hereto marked "FA11".
- In light of the prejudice to Telkom and to the public at large that I have explained above, it would be necessary for this Court to grant the interim part A relief sought on an urgent basis.

G: PRELIMINARY GROUNDS OF REVIEW

- The Constitution of the Republic of South Africa, 1996 ("the Constitution"), mandates, in section 33, that everyone has the right to administrative action that is lawful, reasonable, and procedurally fair. This constitutional right is reflected in the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"), which, in section 6(2), provides grounds upon which administrative action can be reviewed and set aside.
- It is widely accepted that ICASA is an organ of State. I further submit that the decisions made by ICASA constitute administrative action as defined in section 1 of PAJA.
- 91 Section 1(c) of the Constitution requires that the rule of law be upheld by organs of State. To this extent, Courts have acknowledged that the exercise of public power or the performance of a public function, should be informed by characteristics that encompass the rule of law, namely, lawfulness and

rationality. It has further been acknowledged that the principle of legality encompasses a majority of the grounds of review that are expressed in PAJA.

Part and parcel of a review process is the provision of access to the record of proceedings to the party seeking the review in terms of Rule 53(1) of the Uniform Rules of Court ("the Record"). In this instance, the averments made in relation to why ICASA's Decision is reviewable are made on what has been provided publicly or with reference to correspondence between Telkom and ICASA and/or other stakeholders. In these circumstances, Telkom shall, should the Record provide information that could further benefit Telkom's argument, supplement this founding affidavit and, if required, amend its notice of motion.

I submit that ICASA's Decision is reviewable on the following grounds (which will be supplemented in due course as necessary) as set out below:

Ground of review: Irrationality

I submit that when a decision is made, it should be supported by evidence and information. In essence, there should be an objective link or basis between the information before the decision-maker and the decision which is taken, or the purpose for which the decision was taken and the decision itself.

Besides simply asserting that the temporary radio frequency spectrum will not be extended as the demand has allegedly decreased, ICASA has not provided any valid reasons for the Decision made despite having had multiple

opportunities to do so. The unfounded and bald assertion that the economy is recovering based on increased traffic on the roads does not justify the Decision, which will have significant adverse socio-economic and economic effects.

- In light of the fact that *inter alia*, the COVID-19 pandemic is still extant, and the country is still under constantly varying levels of lockdown, it is submitted that the Decision was taken without good reason. It is undeniable that the pandemic remains a fact of life.
- 97 The media statement that was published on 27 May 2021, wherein ICASA expressed the importance of the finalisation and resolution of the spectrum litigation that was ongoing at the time and impact that it had on the permanent licensing of spectrum also appears to be related to the reasons for the Decision, incorrectly so. A copy of the media statement is annexed hereto marked "FA12".
- 98 Similar views were repeated in ICASA's letter dated 10 September 2021 which was addressed in response to Telkom's letter dated 8 September 2021, and in the television interview by the second respondent as aforesaid.
- It is apparent that the Decision is related to or motivated by the permanent licensing of spectrum. It has now materialised that the permanent licensing of spectrum is anticipated to commence on 1 March 2022. It is therefore clear that ICASA's Decision is absurd as it threatens to destabilise the ICT sector which has significant consequences and acts contrary to the public interest, in

circumstances where it is anticipated that the auction process will commence approximately 4 months after the non-extension of the temporary radio frequency spectrum.

100 ICASA itself has recognised the need for the continuous extension of the validity period of temporary spectrum licences pending the permanent allocation when it released a media statement on 27 November 2020, which is annexed hereto marked "FA13", stating, *inter alia*, the following:

"In light of the fact that the auctioning of the high demand spectrum will occur in March 2021, the Council of the Independent Communications Authority of South Africa (ICASA/Authority) has approved the amendment of the ICT COVID-19 National State of Disaster Regulations in order to extend the validity period of the temporary assignment of radio frequency spectrum ("temporary spectrum") to no later than 31 March 2021...".

The question is therefore, what conditions have changed that could have resulted in the Decision not to extend the licences beyond 30 November 2021 in circumstances where the COVID-19 pandemic and national state of disaster persist. The allegation that there is now less demand as there are more cars on the road is unscientific and simply unfounded and irrational. Furthermore, it is undisputable that the furtherance or determination of the permanent licensing of spectrum is far from being completed, notwithstanding undertakings from the second respondent that the process will be expedited. The fact that the process will supposedly be expedited ought to be more reason to avoid destabilising the



sector during this volatile period. In any event the process for licensing permanent spectrum may continue in parallel.

102 ICASA's Decision, particularly in light of the timetable published on 1 October 2021 as aforesaid, flies in the face of what it is required to do over and above balancing the commercial interests of the various mobile networks – being ensuring that the extensions are justifiable and beneficial to the South African public, a sentiment that was shared by the Chairperson in his statement dated 22 April 2021 which is annexed hereto marked "FA4". It is furthermore contrary to the reasons that the temporary licensing was granted in the first place. Accordingly, the Decision was not rationally connected to the purpose for which it was taken.

Ground of review: Irrelevant considerations were taken into account or relevant considerations were not considered

- The failure of a public body to apply its mind in not taking relevant considerations into account or taking irrelevant considerations into account when making its decision, give rise to a ground of review.
- 104 It should be noted that when Telkom, in its letters, asked for an indication of what the proposed measures are in order to address the ongoing and increased data usage occasioned by COVID-19 and the national state of disaster, the regulator did not provide a response. To this extent, what was considered, or

not considered, can at this stage only be drawn from ICASA's lack of engagement with Telkom and what has been conveyed in the media.

- In its media statement dated 30 August 2021, ICASA expressed that, in coming to the decision to not extend the licensing of temporary radio frequency spectrum, it considered the current environment in relation to the number of infections, the reopening of the economy, the process of the economy and the need to direct efforts to the permanent licensing of spectrum.
- The benefits and the importance of the temporary spectrum licensing and the continuous need has been canvassed elsewhere in this affidavit and it is submitted that these are the considerations that should have guided ICASA's decision making process.
- 107 Furthermore, it appears from media statements that ICASA is conflating the issue related to the licensing of temporary radio frequency spectrum and the permanent spectrum licensing process. It is submitted that, at this stage, the manner in which ICASA has relied on the permanent licensing process is misplaced.
- As explained before, the ITAs were reviewed and set aside. The process has since started anew and as the timetable is set out above indicates, the auction will commence on 1 March 2022, four months after the date set for the end of the use of the temporary radio frequency spectrum. A reasonable decision-maker would have, in considering the role of the permanent licensing process,

considered this to be a significant factor for the extension of the temporary radio frequency licences. Ultimately, without permanent licensing, not extending the temporary spectrum licences means that mobile networks are not able to meet the capacity demands occasioned by COVID-19. The assertion that there will be sufficient capacity notwithstanding the realities of the significant and live challenges that have been brought about by the pandemic in the country and the world at large is simply baseless.

Ground of review: The decision is unreasonable

- 109 ICASA's Decision was so unreasonable that no reasonable person could have so exercised the power. The time period which ICASA has provided for the parties to unwind, being from 31 August 2021 to 30 November 2021, is wholly insufficient, as stated above.
- The reason for this is that, as indicated in annexure "FA10". Telkom would be required to prepare for and execute the switch-off of temporary spectrum within 3 months, with the phased switch-off itself requiring approximately 6 weeks.
- 111 This is not sufficient time to responsibly and effectively switch-off the use of temporary spectrum.
- In addition, an estimated duration of 7 or more months is required after the switch-off to further optimise the network and manage customer experience fallouts. The effect of this is that Telkom will experience reduced network

performance. For example, lower data throughputs and reduced network coverage (some customers will fall outside Telkom network coverage with the removal of the sub 1 GHz spectrum).

- Had ICASA acted as a prudent regulator and consulted the licensees, it would have been evident that the prescribed time period is insufficient and will prejudice not only Telkom but the public and economy at large.
- 114 The decision is accordingly unreasonable, is reviewable and ought to be set aside.

Ground of review: Procedural unfairness

- 115 What is considered fair, is generally dictated by the facts and circumstances of each and every situation. Applicable to the temporary licensing process is the reasonable opportunity to make representations. This would mean affording the various stakeholders who are impacted, or could be impacted by ICASA's decision, an opportunity to make submissions relating to the Decision.
- 116 ICASA is aware of the need to consult and request representations from various affected stakeholders in matters relating to the Decision. On 23 April 2021, ICASA issued a notice requesting written representations from interested parties and members of the public on issues that should be considered regarding the review of the Regulations at that time. Amongst these issues was whether ICASA should consider extending the duration of temporary radio

frequency spectrum licences beyond 31 May 2021. A copy of this notice is annexed hereto marked "FA14".

- The opportunity to make representations will only be effective if it relates to the decision to be made and the affected parties are made aware of this. ICASA cannot therefore rely on the consultation process that was undertaken in April 2021. While the decision had similar characteristics, it is apparent that the decisions were influenced by different conditions, and therefore required their own processes, as network capacity has varied significantly over the last few months.
- As indicated above, the Decision by ICASA appears to be guided by the permanent licensing of radio frequency spectrum, a process which is far from being finalised as well as the misguided notion that the demand for the spectrum has now decreased sufficiently to no longer require the temporary licenses in existence. To this extent, I submit that a consultation process that requires submissions on the status of the extension of temporary radio frequency spectrum licences in view of the permanent licensing of radio frequency spectrum, would have given effect to the requirement of procedural fairness in the decision-making process.
- 119 The Directions of the Minister, to which ICASA is bound, continuously expressing the interrelation between the subsistence of the COVID-19 pandemic and the contents of the Directions identifies the need for the



temporary licences pending the final licensing of the spectrum. ICASA is under an obligation to meet the Directions.

Regulation 2(b) further provided that the temporary licensing of radio frequency spectrum was to "enable the facilitation of the national response to the National Disaster and post-disaster recovery and rehabilitation". (my emphasis).

Ground of review: error of fact

- 121 It is trite that administrative actions should be taken on an accurate factual ground. A decision that is ultimately based on a material mistake of fact, renders the decision reviewable in terms of PAJA, alternatively the principle of legality.
- As indicated elsewhere in this affidavit, the decision, which appears to be based on a misstatement that the COVID-19 pandemic and the COVID-19 crisis has passed and that the country is no longer in a time of crisis. As further indicated above, the consequences of the COVID-19 pandemic are ongoing and will continue to impact the lives of South Africans for the foreseeable future.
- The decision is accordingly based on a misstatement of fact and on this basis alone, should be reviewed and set aside.



CONCLUSION

As demonstrated above, it is clear that for as long as the COVID-19 pandemic and declaration of the national state of disaster persist, and with it the demands on mobile networks and the need for adequate spectrum to meet these demands, preserving the overarching benefits derived from the licensing of temporary radio frequency spectrum remains crucial.

125 For the reasons set out in the above paragraphs, I respectfully submit that Telkom has established a case for the relief sought.

WHEREFORE Telkom prays for an order in terms of the notice of motion to which this affidavit is annexed.

DR SIYABONGA MAHLANGU

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _______ on this the ______ day of OCTOBER 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS

Full names: Address:

Jonathon Robert Beard Commissioner of Oaths

Capacity:

Ex Officio Practising Attorney R&A 30 JELLICOE AVENUE

ROSEBANK, 2196, JOHANNESBURG



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion. Private Bag X10, Highveld Park 0169 Telephone number: (012) 568 3000/1

TEMPORARY RADIO FREQUENCY SPECTRUM LICENCE No.: IMT/TEMP/RF003/APR/20

GRANTED AND ISSUED

TO

TELKOM SA SOC LTD

FOR THE PROVISION OF

IMT700, IMT800, IMT2600, IMT3500

SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA

AT CENTURION ON THIS 20th DAY OF APRIL 2020

EFFECTIVE FROM THE <u>20</u> APRIL 2020

DR. KEABETSWE MODIMOENG

ACTING CHAIRPERSON

Dr. K Modimoeng (Acting Chairperson), N Gongxeka-Seopa, P Kadi, P Mashile, BC Mokhele, Adv. D Qocha, T Semane, PJ Zimri (Councillors), WA Ngwepe (CEO)

1. LICENSEE

The Licence is issued to:

- 1.1. Name of Company/Entity: Telkom SA SOC Ltd
- 1.2.Control of the Licensee: Control shall vest in the Board of Directors of a Company known as Telkom SA SOC Ltd

2. CONTACT DETAILS

2.1. The contact person for the Licensee shall be:

2.1.1.Name: Siyabonga Mahlangu

2.1.2.Tel : 012 311 3598

2.1.3.Fax : 086 479 3325

2.1.4.Cell : N/A

2.1.5.Email: siyabonga@telkom.co.za

2.2. Should the Licensee propose to change the details above, the Licensee must notify the Authority in writing within seven (7) days after effecting such change.

3. NOTICES AND ADDRESSES

The Licensee chooses the following as its principal addresses:

3.1.Postal Address : Private Bag X148

Centurion Gauteng

0046

3.2. Physical Address : 61 Oak Avenue, Highveld

Techno Park
Centurion
Gauteng

0157

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SCHEDULE B

1. NAME OF LICENSEE

Telkom SA SOC Ltd

2. LICENCE PERIOD

- 2.1. Subject to regulation 6(6) of the Information and Communications Technology ("ICT") COVID-19 National Disaster Regulations as published on 06 April 2020 ("ICT COVID-19 Regulations"), any radio frequency spectrum assigned temporarily to licensees shall be revoked upon the expiry of three (3) months post termination of the National State of Disaster.
- 2.2. No radio frequency spectrum licence assigned pursuant to the ICT COVID-19 Regulations shall be valid after 30 November 2020.

3. RIGHT TO USE THE IMT700, IMT800, IMT2600 AND IMT3500 RADIO FREQUENCY SPECTRUM

3.1 The licensee is authorised to utilise the radio frequencies in accordance with the technical parameters set out in Schedule C that forms part of this licence.

4. LICENCE OBLIGATIONS

- 4.1 Licensee must send to its subscribers by SMS, free of charge:
 - 4.1.1 At least two public announcements per day regarding the prevention and management of COVID19, and
 - 4.1.2 Notifications of all announcements by the Minister of Health or the Presidency.
- 4.2 Licensees must zero rate all COVID-19 sites as identified from to time by the Department of Health by notice in the government gazette.

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- 4.3 The licensee shall connect district virtual classroom platforms to support virtual teaching during the COVID-19 national disaster, which shall be determined by the Authority after consultation with the relevant Departments responsible for education and communications. The connectivity must be at a speed of no less than 10 Mbps. The licensee must provide the hardware and software required for the provision of connectivity to all district virtual classroom platforms allocated by the Authority. The specifications of the hardware and software shall be determined by the Authority after consultation with the licensee and the relevant Departments responsible for education and communications. The installation of the hardware, software, and connectivity solution must be done by the Licensee.
- 4.4 The Licensee must maintain the network connection in line with regulatory requirements on service provision as published for the duration of this licence. The licensee must provide the above services, free of charge for the duration of this licence. Ownership of the deployed solution, hardware and software shall pass to the Department of Education on completion of installation by the licensee.
- 4.5 The Licensee shall implement amended and/or further licence obligations as determined by the Authority in the ICT COVID-19 Regulations as amended from time to time.
- 4.6 The Licensee shall provide the following consumer benefits due to temporary licensing of additional Radio Frequency Spectrum as per the technical specification in Schedule C:
 - 4.6.1 Provide zero-rated access to educational sites for all public universities, Technical and Vocational Educational Training (TVET) colleges and all public schools across the Republic of South Africa.
 - 4.6.2 Enablement of small and medium businesses to connect during the COVID-19 period;
 - 4.6.3 Enablement of consumers from underserviced areas as defined in Annexure A of the Under-Serviced Area Definition Regulations, 2011

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- to connect using the network by providing connection speeds of no less than 10 Mbps; and
- 4.6.4 Provide data services at a reduced rate to consumers.

5 GENERAL CONDITIONS

- 5.1 This licence is issued for use only at the locations and on the radio frequencies as stipulated in Schedule C.
- 5.2 The licensee must at all times observe the provisions of international telecommunications conventions, such as those governing the International Telecommunication Union (ITU) and as they apply to the Republic of South Africa.
- 5.3 The Licensee shall not have any claim whatsoever against ICASA for any loss it may suffer as a result of;
 - 5.3.1 switching off of station (s) as stipulated in Schedule C;
 - 5.3.2 any interruption in the station or the associated space segment portions that may affect the quality of signals; or
 - 5.3.3 interference to or interruption of the station caused by radio users and electronic communication lines lawfully operated in terms of the Radio Regulations prescribed in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 5.4 Where necessary, Licensees must implement their own guard-bands and network synchronisation to avoid adjacent network interference.
- 5.5 The Licensee must coordinate the roll out of its services with the licensed Broadcasting Services on a site by site basis to ensure that there is no harmful interference.
- 5.6 Due to the fact that Analogue and Digital Television Broadcasting Television services operating in the IMT700 and IMT800 radio frequency bands, sharing and co-existence in these frequency bands are to be implemented

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systematically through a Geographic separation of Mobile IMT Systems and Broadcasting Services in affected areas in accordance with the Terrestrial Broadcasting Frequency Plan 2013, Government Gazette 36321 read with the First Update to the Terrestrial Broadcasting Plan 2013 Government Gazette 38005 dated 16 September 2014 until the end of migration from Analogue to Digital Terrestrial Television process.

- 5.7 Should the harmful interference be experienced on IMT700 and IMT800 radio frequency bands, the Licensee shall switch off the affecting site and coordinate again with the other broadcasting licensees.
- 5.8 The Licensee should undertake to coordinate the roll out of its services with the Authority and existing Broadcasters on a site by site basis to ensure that harmful interference in not caused to existing broadcasting services.
- 5.9 Should interference be experienced in the IMT2600 and IMT3500 bands for any unforeseen reason, the licensee must immediately terminate its services and notify the Authority.
- 5.10 The Authority reserves the right to amend, suspend, revoke, or withdraw its authorisation as it sees fit.
- 5.11 The Authority may require the licensee to share frequencies assigned in terms of the ICT COVID-19 Regulations with other licensees after consultation with affected licensees.
- 5.12 The Licensee is required to provide a monthly report indicating the manner in which the consumer benefit propositions made in its application and the licence obligations contained herein are being implemented.
- 5.13 The Licensee must provide a report within thirty (30) working days from expiry of this license detailing the implementation of the consumer benefit propositions made in its application and the impact/benefit realised by the consumers.
- 5.14 This licence is issued following the notice on ICT COVID-19 National Disaster Regulations.

SCHEDULE C

TECHNICAL SPECIFICATIONS

- 1. The licensee must conform to all applicable standards relevant to the portion of the frequency spectrum authorised herein.
- 2. The licensee must use the associated equipment and radio frequency spectrum within the following specifications:

Frequency Spectrum Assigned:	IMT700		
Frequencies:	713 -723 MHz paired with 768 - 778MHz		
Bandwidth:	2 x 10 MHz (FDD)		
Area of Operation:	National		
Frequency Spectrum Assigned:	IMT800		
Frequencies:	801 - 811 MHz paired with 842 -852 MHz		
Bandwidth:	2 x 10 MHz (FDD)		
Area of Operation:	National		
Frequency Spectrum Assigned:	2600 MHz Band		
Frequencies:	2600 - 2640 MHz (TDD)		
Bandwidth:	40 MHz TDD Spectrum		
Area of Operation:	National		
Frequency Spectrum Assigned:	3500 MHz Band		
Frequencies:	3428 - 3440 MHz (TDD)		
Bandwidth:	12 MHz TDD Spectrum		
Area of Operation:	National		

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DR. KEABETSWE MODIMOENG ACTING CHAIRPERSON

Page 7 C



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion. Private Bag X10, Highveld Park 0169 Telephone number: (012) 568 3000/1

TEMPORARY RADIO FREQUENCY SPECTRUM LICENCE No.: IMT/TEMP/RF006/APR/20

GRANTED AND ISSUED

TO

TELKOM SA SOC LTD

FOR THE PROVISION OF

IMT2300

SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

AT CENTURION ON THIS 24th DAY OF April 2020

EFFECTIVE FROM THE 24 APRIL 2020

DR KEABETSWE MODIMOENG

ACTING CHAIRPERSON

- M

1. LICENSEE

The Licence is issued to:

1.1. Name of Company/Entity: Telkom SA SOC Ltd

1.2.Control of the Licensee: Control shall vest in the Board of Directors of a Company known as Telkom SA SOC Ltd

2. CONTACT DETAILS

2.1. The contact person for the Licensee shall be:

2.1.1. Name: Siyabonga Mahlangu

2.1.2.Tel : 012 311 3598

2.1.3. Fax : 086 479 3325

2.1.4. Cell : N/A

2.1.5. Email: siyabonga@telkom.co.za

2.2. Should the Licensee propose to change the details above, the Licensee must notify the Authority in writing within seven (7) days after effecting such change.

3. NOTICES AND ADDRESSES

The Licensee chooses the following as its principal addresses:

3.1. Postal Address : Private Bag X148

Centurion Gauteng

0046

3.2. Physical Address : 61 Oak Avenue, Highveld

Techno Park Centurion Gauteng

0157

KW



SCHEDULE B

1. NAME OF LICENSEE

Telkom SA SOC Ltd

2. LICENCE PERIOD

- 2.1. Subject to regulation 6(6) of the Information and Communications Technology ("ICT") COVID-19 National Disaster Regulations as published on 06 April 2020 ("ICT COVID-19 Regulations"), any radio frequency spectrum assigned temporarily to licensees shall be revoked upon the expiry of three (3) months post termination of the National State of Disaster.
- 2.2. No radio frequency spectrum licence assigned pursuant to the ICT COVID-19 Regulations shall be valid after 30 November 2020.

3. RIGHT TO USE THE IMT2300 RADIO FREQUENCY SPECTRUM

3.1 The licensee is authorised to utilise the radio frequencies in accordance with the technical parameters set out in Schedule C that forms part of this licence.

4. LICENCE OBLIGATIONS

- 4.1 Licensee must send to its subscribers by SMS, free of charge:
 - 4.1.1 At least two public announcements per day regarding the prevention and management of COVID-19, and
 - 4.1.2 Notifications of all announcements by the Minister of Health or the Presidency.
- 4.2 Licensees must zero rate all COVID-19 sites as identified from time to time by the Department of Health by notice in the government gazette.

Page 3 of

- 4.3 The Licensee shall connect district virtual classroom platforms to support virtual teaching during the COVID-19 national disaster, which shall be determined by the Authority after consultation with the relevant Departments responsible for education and communications. The connectivity must be at a speed of no less than 10 Mbps. The Licensee must provide the hardware and software required for the provision of connectivity to all district virtual classroom platforms allocated by the Authority. The specifications of the hardware and software shall be determined by the Authority after consultation with the Licensee and the relevant Departments responsible for education and communications. The installation of the hardware, software, and connectivity solution must be done by the Licensee.
- 4.4 The Licensee must maintain the network connection in line with regulatory requirements on service provision as published for the duration of this licence. The Licensee must provide the above services, free of charge for the duration of this licence. Ownership of the deployed solution, hardware and software shall pass to the Department of Education on completion of installation by the licensee.
- 4.5 The Licensee shall implement amended and/or further licence obligations as determined by the Authority in the ICT COVID-19 Regulations as amended from time to time.
- 4.6 The Licensee shall provide the following consumer benefits due to temporary licensing of additional Radio Frequency Spectrum as per the technical specification in Schedule C:
 - 4.6.1 Provide zero-rated access to educational sites for all public universities, Technical and Vocational Educational Training (TVET) colleges and all public schools across the Republic of South Africa.
 - 4.6.2 Enablement of small and medium businesses to connect during the COVID-19 period;

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- 4.6.3 Enablement of consumers from underserviced areas as defined in Annexure A of the Under-Serviced Area Definition Regulations, 2011 to connect using the network by providing connection speeds of no less than 10 Mbps; and
- 4.6.4 Provide data services at a reduced rate to consumers.

5 GENERAL CONDITIONS

- 5.1 This licence is issued for use only at the locations and on the radio frequencies as stipulated in Schedule C.
- 5.2 The Licensee must at all times observe the provisions of international telecommunications conventions, such as those governing the International Telecommunication Union (ITU) and as they apply to the Republic of South Africa.
- 5.3 The Licensee shall not have any claim whatsoever against ICASA for any loss it may suffer as a result of;
 - 5.3.1 switching off of station (s) as stipulated in Schedule C;
 - 5.3.2 any interruption in the station or the associated space segment portions that may affect the quality of signals; or
 - 5.3.3 interference to or interruption of the station caused by radio users and electronic communication lines lawfully operated in terms of the Radio Regulations prescribed in terms of the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 5.4 Where necessary, Licensees must implement their own guard-bands and network synchronisation to avoid adjacent network interference.

Page 5 of W

- 5.5 Should interference be experienced for any unforeseen reason, the Licensee must immediately terminate its services and notify the Authority.
- 5.6 The Authority reserves the right to amend, suspend, revoke, or withdraw its authorisation as it sees fit.
- 5.7 The Authority may require the Licensee to share frequencies assigned in terms of the ICT COVID-19 Regulations with other licensees after consultation with affected licensees.
- 5.8 The Licensee is required to provide a monthly report indicating the manner in which the consumer benefit propositions made in its application and the licence obligations contained herein are being implemented.
- 5.9 The Licensee must provide a report within thirty (30) working days from expiry of this license detailing the implementation of the consumer benefit propositions made in its application and the impact/benefit realised by the consumers.
- 5.10 This licence is issued following the notice on ICT COVID-19 National Disaster Regulations.

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SCHEDULE C

TECHNICAL SPECIFICATIONS

- 1. The Licensee must conform to all applicable standards relevant to the portion of the frequency spectrum authorised herein.
- 2. The Licensee must use the associated equipment and radio frequency spectrum within the following specifications:

Frequency Spectrum Assigned:	2300 MHz Band
Frequencies:	2360 - 2380 MHz (TDD)
Bandwidth:	20 MHz TDD Spectrum
Area of Operation:	National

DR KEABETSWE MODIMOENG

ACTING CHAIRPERSON

Page of 7



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion. Private Bag X10, Highveld Park 0169

MEDIA RELEASE

ICASA engages with licensees to open their services to all South Africans as the country fights the scourge of the COVID-19 pandemic

19 March 2020

Pretoria - In light of the recent developments with regards to the spread of the COVID-19 pandemic, the Independent Communications Authority of South Africa (ICASA) has written to licensees in an effort to ensure that they make communication services available to all South Africans.

These engagements take place in the context of the expected surge in usage of data as the majority of South Africans across all sectors have no option but work from home, learn from home and carry on their day to day life activities (i.e. shopping, entertainment, etc.) from home through technological means. This will result in a spike in data usage, particularly as consumers also access information with regards to the pandemic – thus placing strain on the capacity of networks.

"In this context it is therefore critical that the Authority consider regulatory concessions or relaxations to enable the sector to meet the demands of the business unusual environment occasioned by the pandemic," said ICASA's Acting Chairperson, Dr. Keabetswe Modimoeng.

The engagements are taking place across all sectors regulated by ICASA, and include consideration of the measures outlined below.

Telecommunications: ICASA is requesting all network service providers to heed the call to enable the country to mitigate the spread of COVID-19, by facilitating easy and affordable (and/or free) access to data. In this regard, the Authority is engaging the sector on possible ways of radio frequency spectrum relief for the duration of the declared state of disaster to ease congestion, ensure good quality of broadband services, and enable licensees to lower cost of access to consumers (particularly in relation to education, emergency and other social services).

Furthermore, to the extent that the licensees will wish to tailor packages (specifically data packages) to respond to the pandemic, the Authority will consider relaxation of the tariff notification filing requirements to enable speedy roll-out of such packages.



Broadcasting: As regards broadcasting, ICASA is engaging with licensees to facilitate ease of access to information about the pandemic to all South Africans. All individual and class broadcasting services are required to make Public Service Announcements (PSAs) about the COVID-19 in the public interest, and as required by the relevant authorities.

Over and above this, the subscription broadcasting services licensees have been requested to open both their audio and television bouquets to consumers that do not subscribe to their services. This will assist the public to have access to information that they can use to deal with the scourge of the virus that is facing the country.

Postal services: The postal services sector (both reserved and unreserved services) has been requested to advise ICASA of measures they have taken or intend to take to assist customers during this disaster period.

Innovative use of spectrum (TV Whitespaces): Against the background of the regulations on the use of TV Whitespaces, ICASA recently commissioned TV Whitespaces Databases to enable the use of TV whitespaces spectrum for the roll-out of data services, particularly in rural and remote areas. Several trials were conducted in this regard in the recent past. In order to ensure that rural and marginalised communities are also catered for during this period, ICASA calls on all service providers who meet the proposed minimum certification requirements to make use of the database for purposes of providing affordable and/or free access to data to rural consumers during this period.

"The Authority believes that these measures are critical during this period of declared state of disaster. They are in line with the Authority's mandate of regulating in the public interest to enable the ICT sector to implement critical measures that would see South Africans being able to deal with the pandemic", concludes Dr. Modimoeng.

Ends...

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Paseka Maleka

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Find us on the following social media platforms and website:

Twitter and Instagram: @ICASA_org
Facebook: icasa.org
LinkedIn and YouTube: ICASA

Website : www.icasa.org.za



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REPUBLIC OF SOUTH AFRICA REPUBLIEK VAN SUID AFRIKA

Vol. 657

26 March Maart 2020

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES

NO. 417

26 MARCH 2020

ELECTRONIC COMMUNICATIONS, POSTAL AND BROADCASTING DIRECTIONS ISSUED UNDER REGULATION 10(8) OF THE DISASTER MANAGEMENT ACT, 2002 (ACT No. 57 of 2002)

I, Stella Ndabeni-Abrahams, Minister of Communications and Digital Technologies, do hereby, under regulation 10(8) of the Regulations made under the Disaster Management Act, 2002 (Act No. 57 of 2002) (Government Notice No. 318 published in *Government Gazette* No. 43107 of 18 March 2020), issue the directions in the Schedule.

MS STELLA TEMBISA NDABENI-ABRAHAMS (MP)

MINISTER OF COMMUNICATIONS AND

DIGITAL TECHNOLOGIES

DATE: 26 March 2020



SCHEDULE

1. Interpretation

In these directions, a word or expression bears the meaning assigned to it in the Broadband Infraco Act, 2007 (Act No. 33 of 2007), the Electronic Communications Act, 2005 (Act No. 36 of 2005), the Postal Services Act, 1998 (Act No. 124 of 1998), the Broadcasting Act, 1999 (Act No. 4 of 1999) and regulations published on 18 March 2020 by the Minister of Cooperative Governments and Traditional Affairs in terms section 27(2) of the Disaster Management Act, 2002 (Disaster Management Regulations, 2020), unless the context otherwise indicates, and—

"Eskom" means Eskom as defined in section 2 of the Eskom Act No. 40 of 1987;

"fake news" means statements with the intention to deceive as contemplated in Disaster Management Regulations, 2020;

"SASSA" means SASSA as defined in the South African Social Security Agency Act, 2004 (Act No. 09 of 2004);

"SANRAL" means SANRAL as defined in the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);

"Sentech" means Sentech as defined in the Sentech Act, 1996 (Act No. 63 of 1996);

"SITA" means SITA as defined in the State Information Technology Agency Act, 1998 (Act No. 88 and 1998);

"Transnet" mean Transnet as established in terms of section 22 of the Legal Succession to the South African Transport Services Act, 2008 (Act No. 38 of 2008):

".ZADNA" means .za Domain Name Authority as defined in the Electronic Communications and Transaction Act, 2002 (Act No. 25 of 2002).

2. SCOPE

These Directions must be read with the laws referred to in paragraph 1 above and seek to provide for the availability and use of technologies to combat COVID-19 in the following areas:

- 2.1 Dissemination of real time public information;
- 2.2 Access to communications infrastructure and digital services;
- 2.3 Provision of essential postal services;



- 2.4 Tracking and tracing of persons;
- 2.5 Support to the following key sectors:
 - 2.5.1 Education
 - 2.5.2 Health
 - 2.5.3 Local Government.

3 APPLICATION

- 3.1 These Directions apply where necessary to the following categories:
 - 3.1.1 Electronic Communications Service Licensees;
 - 3.1.2 Electronic Communications Network Service Licensees:
 - 3.1.3 Broadcasting Service Licensees;
 - 3.1.4 Community broadcasting service Licensees;
 - 3.1.5 Internet Service Providers (ISPs);
 - 3.1.6 Over the Top players (OTTs);
 - 3.1.7 Postal Service Licensees; and
 - 3.1.8 Land holders including all spheres of government and the private sector.
- 3.2 These Directions are issued pursuant to regulation 10(8) of the Disaster Management Regulations, 2020 to provide for measures necessary to manage COVID-19, and are valid for the duration of the declared national state of disaster.

4. PURPOSE

The purpose of these Directions is to facilitate the availability and use of digital technologies to combat the spread of COVID-19 in South Africa, through:

- 4.1 ensuring the smooth operations of the electronic communications industry (telecommunications infrastructure and services) as essential services during the disaster period;
- 4.2 imposing social compact obligations on individual and class broadcasting service licensees to broadcast public service announcements related to the national effort to combat the spread of COVID-19 and its impact;
- 4.3 enabling electronic communications service licensees and other service providers to rapidly deploy networks and facilities as contemplated in the Electronic Communications Act, thus increasing the demand and usage of electronic communications services;
- 4.4 removing obstacles associated with the rapid deployment of electronic communications services; and



4.5 establishing a coordinating mechanism, as may be required, through which licensed and non-licensed industry service providers can facilitate the provisioning of the services outlined in these Directions.

5. INTERVENTIONS

5.1 DISSEMINATION OF INFORMATION

- 5.1.1 Class and Individual Broadcasting Service Licensees are required to receive and disseminate public information related to the national effort to combat the spread of COVID-19 in all local languages including sign language;
- 5.1.2 All Electronic Communications Service Licensees and Electronic Communications Network Service Licensees with access to the radio frequency spectrum are required to make available their platforms for the streaming of public announcements to their customers or subscribers;
- 5.1.3 Electronic Communications Services Licensees, OTTs and ISPs that provide linear and non-linear services bears the responsibility to remove fake news related to COVID-19 from their platforms immediately after identified as such.
- 5.1.4 All Internet sites operating within .zaDNA top level domain name must have a landing page with a visible link to www.sacoronavirus.co.za.

6. AVAILABILITY OF COMMUNICATIONS AND DIGITAL SERVICES

- 6.1 All service providers of electronic communications networks and services (telecommunications infrastructure and services) must ensure continued service provision.
- A service provider of electronic communications networks or services must, when requested to do so, rapidly deploy temporary electronic communications networks and services in areas identified after consulting with the relevant Ministers.
- 6.3 For the purposes of easing network upgrades related to the COVID-19 disaster, a licensed entity may seek approval to deploy infrastructure without delay, in which case the Minister will engage with the affected Ministers to secure concurrence to allow industry to deploy without delay.



- 6.4 Ministerial interventions in this regard may include temporary deferment of wayleaves and the payment of fees following agreement between relevant parties.
- 6.5 No access fee may be charged by property owners to electronic communications network service licensees for deploying electronic communications networks or facilities in cases where the electronic communications networks or facilities are not intrusive, such as buried or overhead cabling, that does not constitute a cost to the property owner, or deprive the property owner of its own use of the land.
- 6.6 Reasonable access fees may be charged in cases where more intrusive electronic communications networks or facilities, such as masts, are erected on property. In such cases any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the property owner or exploit the electronic communications network service licensee.
- 6.7 All licensees will be required to submit reports during the period of the disaster of new infrastructure and network facilities to be installed in response to the COVID-19 disaster to the Authority.
- The Authority must keep a register of all infrastructure and network facilities contemplated in paragraph 6.7 above.
- 6.9 For the duration of the COVID-19 national disaster, the Authority must prioritise the regulatory framework applicable to the management and licensing of radio frequency spectrum that would enable implementation of this direction on an urgent basis.
- 6.10 To the extent possible, the Authority must relax spectrum regulations to enable the temporary licensing of all available spectrum bands including the unassigned high demand spectrum for duration of the COVID-19 national disaster.
- 6.11 The temporary assignment of the unassigned high demand frequency spectrum must be focused on those licensees that would be able to implement and use assigned frequency spectrum for duration of the COVID-19 national disaster on an expeditious basis. Frequency coordination and planning will be necessary to effect this assignment.



TYPE APPROVAL

- 7.1 The automatic type approval of network equipment and handset devices based on the applicants meeting predetermined criteria including:
- 7.1.1 prior approvals in South Africa and other recognised jurisdictions;
- 7.1.2 submission of a safety certification and
- 7.1.3 online real time approvals for equipment already approved in the other jurisdictions in Region 1.
- 7.2 The Authority must keep a register of all approvals granted during the state of national disaster.

8. INDIVIDUAL TRACK AND TRACE

- 8.1 The Electronic Communication Network Service (ENCS) and Electronic Communication Service (ECS) Licensees, internet and digital sector in general, must provide location-based services in collaboration with the relevant authorities identified to support designated departments to assist and combat the spread of COVID-19.
- 8.2 The South African Post Office must make available its national address system and any applicable database to assist the relevant authorities identified to track and trace individuals that have been infected and such other persons that may have been in direct contact with such infected persons. A database may be correlated with other sources from government and private sector.

9. SUPPORT TO EDUCATION SECTOR

- 9.1 Electronic Communications Service Licensees must provide zero-rated access to local educational content websites.
- 9.2 Audio visual services especially the broadcasting services licensees must increase their educational programmes to support awareness of COVID-19.
- 9.3 The Electronic Communications Service Licensees and Electronic Communications Network Service Licensees with access to high demand spectrum must make available connectivity to 104 district virtual classroom platforms with minimum speeds of 10Mbs to support virtual teaching during the COVID-19 national disaster.



10. SUPPORT TO HEALTH SECTOR

- 10.1 All audio-visual services particularly broadcasting service licensees must support the health sector with programming and public announcements related to the COVID-19 disaster.
- 10.2 Electronic Communications Service Licensees and Electronic Communications Network Service Licensees with access to the radio frequency spectrum must zero-rate all COVID-19 sites as identified by the Department of Health.

11. ROLES OF STATE-OWNED ENTITIES

11.1 Broadband Infraco, Sentech, Transnet, Eskom, Prasa and Sanral

All fibre-owning state owned companies must make their excess capacities available for the connection of key government installations including essential services in local government and SMMEs to ensure business continuity during COVID-19 disaster.

11.2 Universal Service and Access Agency and the Universal Service and Access Fund

All funds earmarked for the provision of broadband must support the district and local municipalities to improve their broadband and digital government capabilities to mitigate the negative impact of COVID-19 on the provision of services to the citizens.

11.3 State Information Technology Agency

SITA must ensure that government departments are able to function remotely.

11.4 South African Post Office and South African Postbank

The South African Post Office and South African Postbank must support the efforts of the Minister of Social Development and SASSA in the implementation of measures to combat the spread of COVID-19, in so far as payment of social grants is concerned.



12. PROHIBITION ON PRICE INCREMENT AND MOBILE NUMBER PORTABILITY

All licensed entities must not effect any price increases and not perform mobile number portability for duration of the COVID-19 national disaster.

13. COMMENCEMENT

These Directions will come into operation on the date of publication in the *Government Gazette*.





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Independent Communications Authority of South Africa

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MEDIA STATEMENT

ICASA publishes a Call for Comments on the ICT COVID-19 National Disaster Regulations

22 April 2021

Pretoria – The Independent Communications Authority of South Africa (ICASA/the Authority) is seeking written submissions from interested stakeholders in respect of the review of the Information and Communications Technology ICT COVID-19 National Disaster Regulations (the "Regulations"), as amended.

The issues of consultation with regards to this process include but are not limited to: the temporary assignment of International Mobile Telecommunications (IMT) radio frequency spectrum to address challenges posed by COVID-19; current radio frequency spectrum sharing arrangements; obligations relating to temporarily assigned IMT radio frequency spectrum (in respect of school connectivity and/or virtual classrooms obligations); type-approval relaxation measures; broadcasting services and related matters (e.g. suspension of obligations for convening of annual general meetings for community broadcasters and the requirements for local content programming).

ICASA Chairperson Dr Keabetswe Modimoeng previously indicated that mobile network operators must continue to provide services to the public during the National State of Disaster, and may derive commercial value from this high value spectrum resource assigned to them on a temporary basis. Therefore, the Authority needs to apply itself with care and circumspection on the provisions of these Regulations (in particular, the temporary spectrum extensions), and in a manner that is justifiable and primarily beneficial to the consumers of electronic communications, broadcasting and postal services.

"The approach we have undertaken is quite comprehensive because we have learnt a lot since the outbreak of the coronavirus pandemic about regulating in a time of crisis. This is an opportunity for all of us to sift through and identify what is really pressing and compelling for the benefit of the South African public. We also need to measure the impact of our regulatory interventions in the broader industry and the regulated sector as a whole, including consumer protection and benefits," says Dr Modimoeng.





The temporary release of high demand spectrum to licensees was aimed at mitigating the impact of the National State of Disaster, following the outbreak of COVID-19 in 2020, mainly by easing network congestion, maintaining good quality of broadband services, and enabling licensees to lower the cost of access to consumers.

Written representations on the review of the Regulations must be submitted to the Authority by no later than **16h00 on 7 May 2021.** No late representations will be considered, nor any extension granted.

The Authority encourages civil society organisations, consumer groups, independent production companies and all interested stakeholders to participate in this process so that ICASA can have a holistic overview of issues that must be addressed by these Regulations.

A copy of the notice inviting written presentations on the review of the Regulations will be published in the Government Gazette and also made available on the Authority's website at www.icasa.org.za.

Ends...

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NON-CONFIDENTIAL VERSION

Submission to the Independent Communications Authority of South Africa

Comments pertaining to the Notice regarding the amendment of the ICT COVID-19 National State of Disaster Regulations

TELKOM SA SOC LTD



1. INTRODUCTION

Telkom welcomes the opportunity to comment on the review of the ICT COVID-19 National State of Disaster Regulations ("the Regulations").

The Regulations were promulgated having given consideration to 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 of 2002 (the "Directions."). The purpose of the Directions was to facilitate the availability and use of digital technologies to combat the spread of COVID-19. The purpose of the Regulations, which followed the Directions, is to prescribe minimum standards that licensees must adhere to in order to facilitate the dissemination of information required for dealing with the National Disaster and to ensure that there is continuation of the provision of services in the Republic. The purposes as outlined in both the Directions and the Regulations respectively remains valid to date.

The purpose as outlined in both the Directions and the Regulations remains valid to date.

The Authority has also, repeatedly in its media statements relating to the various amendments to the Regulations stated that:

"The temporary release of high demand spectrum (HDS) to licensees is aimed to mitigate the impact of the national state of disaster following the outbreak of COVID-19 in 2020 mainly easing network congestion, maintaining good quality broadband services and enabling licensees to lower the cost of access to consumers."

Telkom notes the specific written representations, including reasons thereof, that the Authority requires from interested parties and the public as outlined in section 8 of the notice calling for representations. Telkom's detailed written representations are outlined hereunder.

1.1. Ongoing National State of Disaster

The Authority is aware that the continuing date of national disaster in the country is regulated and managed in terms of the Disaster Management Act, 57 of 2002 ("the DMA"), and Regulations made thereunder. At the moment the applicable Regulations promulgated under the DMA prescribe the state of national disaster to be at Alert Level 1. It follows therefore that the state of national disaster is still of force and effect. It is also expected that the current expiry date of 15 May 2021 will again be extended until there is a level of certainty that the pandemic has been successfully contained and managed. In that event the state of national disaster will have to be terminated by means of an appropriate publication in the official gazette, in terms of section 27(5)(b) of the DMA.

As South Africa enters its annual winter season, there are widespread expectation that a third wave

TELKOM SA SOC LTD



of COVID-19 outbreak may occur, that could result in lockdown alert level changes or further restrictions being imposed. Resurgence of COVID-19 outbreaks are continuously occurring internationally, as is currently also seen in for example India, resulting in other nations implementing new or more stringent lockdown rules. This is also reflected in the country's international borders remaining impacted with ongoing travel restrictions, both incoming and outgoing. On 6 May 2021 South Africa recorded in excess of 2000 daily positive cases of COVID-19; this level was last seen in February 2021.

South Africa has recently started its COVID-19 vaccination programme, which is expected to take many months to be completed. Experts are of the view that, until a certain level of vaccination has been reached, South Africa remains vulnerable to new outbreaks. Also, the vaccination programme will require ICT support in the form of sending of free SMSs, zero rating of sites, etc.

Although South Africa moved from lockdown level 5 to level 1, many companies and government institutions continue to operate remotely from their ordinary places of work, as encouraged by the government for South African's to continue observing non-pharmaceutical measures, including social distancing. Some companies also continue to implement shifts, with staff working alternatively from the office and from home. Most universities also continue to operate remotely, with only selected students having returned to campus. Many schools also employ a hybrid model of rotating learners between attending classes and learning and studying from home. Virtual learning has been introduced as an additional tool to support schools in their duties to educate learners.

The continued availability of additional mobile network coverage and capacity using the temporary assigned spectrum, reducing cost to communicate, zero-rating of educational and health web sites, etc. are essential to continue to support South Africans to work and study from home or remotely and to cater with the additional data demand.

1.2. Executive summary of the main propositions in this docuement

- The National State of Disaster is ongoing with many companies, government institutions and universities continuing to work and function from home, even under national alert level 1. Indications are that the third wave of the pandemic is emerging, based on the increased number of cases during the last seven days. This continues to put a huge demand on Telkom's mobile network, which must be supported through the ongoing availability of the temporary assigned spectrum. The availability of additional mobile network coverage and capacity is needed to support South African citizens through the National State of Disaster. Ongoing support in the form of reduced cost to communicate, zero-rating of educational and health web sites, etc. are vital to support South Africans to work and study from home or remotely. Telkom addressed the increase demand for data due to the national lockdown through the use of its existing licensed spectrum as well as the temporary assigned spectrum.
- The interim court order does not prohibit the continued licensing of temporary spectrum under

TELKOM SA SOC LTD



the ICT COVID-19 National State of Disaster Regulations. The issue of the continued application and validity of temporary spectrum licences issued by the Authority upon the Direction issued by the Minister was not raised or determined through the interim interdict. It also does not render the original reasons for licensing of temporary spectrum any less valid.

- The use of the 700 MHz and 800 MHz frequency bands is limited to areas where broadcasting systems have not been deployed. In the areas where Telkom could deploy mobile IMT services, a positive effect on network coverage and throughput and therefore customer experience is obtained.
- The spectrum sharing arrangements or spectrum pooling approved through the Regulations may be beneficial for the involved operators but are not beneficial for competition and consumers. These sharing arrangements must be scrutinised carefully for potential anticompetitive effects. This is true especially when any such arrangements include spectrum or capacity sharing designed to provide extra capacity to Vodacom and MTN in the context of a highly concentrated market.

The reference to Government Gazette No. 43107, Notice 318 in para 2 of the introduction section seems incorrect. The policy directions were published on 26 March 2020 in Government 43164, Notice 417.

The rest of the submission is structured as follows:

- Section 2 addresses the impact of the National State of Disaster on Telkom's network
- o Section 3 highlights the benefits in the use of the temporary spectrum
- Section 4 contains responses to the specific questions raised in the Notice.

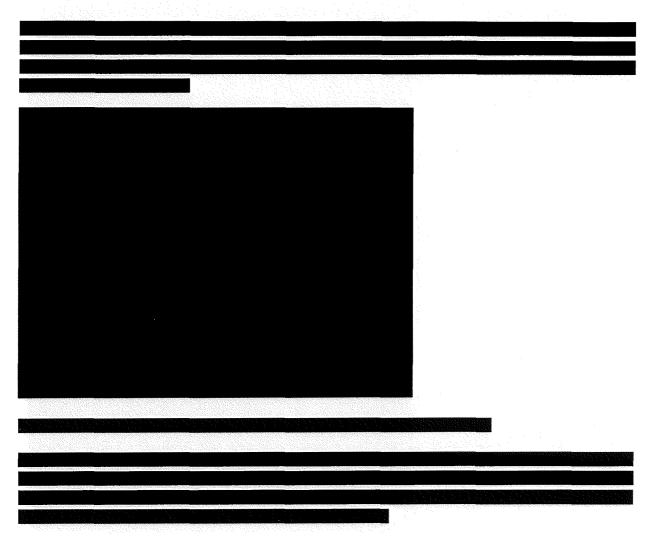
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2. IMPACT OF THE NATIONAL STATE OF DISASTER

2.1. Overall network performance:

Telkom experienced a huge increase in demand for data on its mobile network at the start of the national lockdown, which confined people to their homes, resulting in overwhelming reliance on the mobile network for work, education, information and entertainment.



Telkom's network performance during this period and in concentrated areas was impacted by Telkom not having an assignment of sub 1 GHz spectrum, meaning that the existing 1800 MHz band in those areas was configured for both coverage and capacity, versus other operators with access to sub 1 GHz, who have more flexibility from a coverage perspective. When the traffic patterns change abruptly as it did during lockdown, it added further pressure on Telkom's dual coverage/capacity configuration in 1800 MHz.

The application of temporary spectrum made a positive impact on Telkom's network, and even though

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coverage spectrum could not be deployed everywhere needed (due to presence of broadcasting systems), it did have a limited positive impact.
Rollout of temporary spectrum is ongoing. Telkom files regular reports to the Authority on the deployment of temporary spectrum assigned to it and how it is responding to capacity demands occasioned by the changes in the traffic flow.
Overall peak network data are also split between FDD (700 MHz, 800 MHz, 1800 MHz and 2100 MHz) and TDD (2300 MHz and 2600 MHz) traffic, which is indicated in Figure 3 below.

As mentioned, the unavailability of 700 MHz and 800 MHz due to the presence of broadcasting

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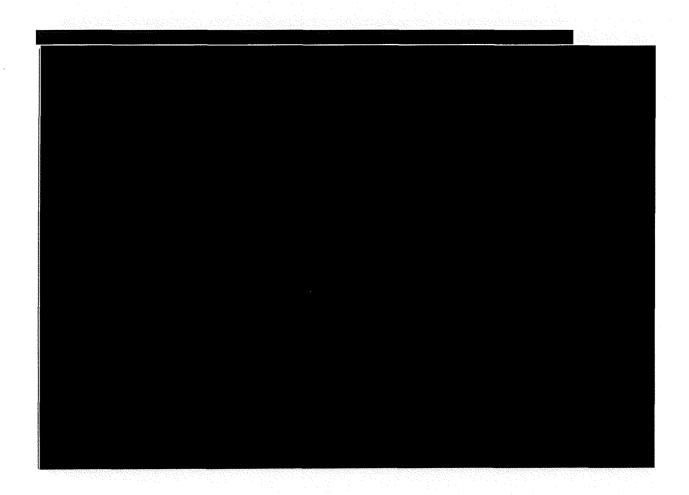


systems, made it impossible for Telkom to deploy mobile systems in these bands optimally at all of the critical areas of the network: 45% of intended sites had to be re-planned and re-acquired after interference studies were done together with Sentech. In addition,
Site level performance is indicated below where measurement have taken place at sites where temporary spectrum could be deployed:

Telkom followed a roll-out prioritisation in underserved areas across provinces as listed in Table 1 below. The intention was to ensure that networks are extended to those areas currently not serviced through Telkom's network or where the radio coverage is less adequate.

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Submission Date: 7 May 2021

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BENEFITS IN THE USE OF THE TEMPORARY SPECTRUM

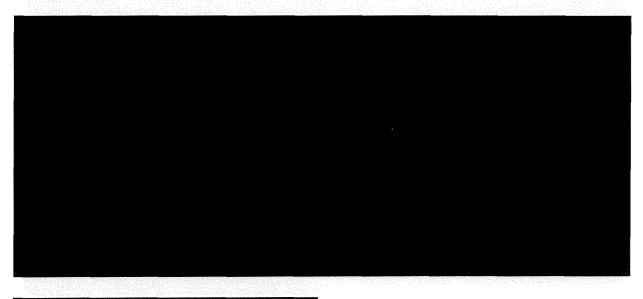
As soon as the temporary spectrum was licenced, Telkom Mobile planned, procured and started deploying these throughout the network. This was needed in order to address the increase in data demand due to the National State of Disaster, as shown in the data below.

Impact if TDD temporary licenced spectrum is removed:

The below analysis includes the TDD bands namely 2300 MHz (i.e. 2300-2385 MHz), which is licensed to Telkom, and temporarily licenced 2600 MHz (i.e. 40 MHz).

The contribution of 4CC/6CC (4CC is 4 carriers of 20 MHz each in the 2300 MHz band licensed to Telkom and 6CC refers to two additional 20 MHz carriers in the 2600 MHz band using the temporarily licenced spectrum) traffic is clearly visible in Figure 5 below. The bar graph indicates the number of sites deployed since the licencing of the temporary spectrum,

Permanently assigned spectrum will not be able to cater for this, which will result in severe congestion and decrease in network quality.

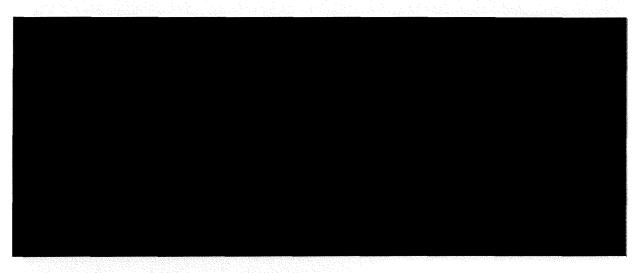


TDD network performance in terms of resource block utilisation and average daily throughput is indicated in Figure 6 below. The positive impact on the network since the start of deployment of the

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temporary spectrum is clear.

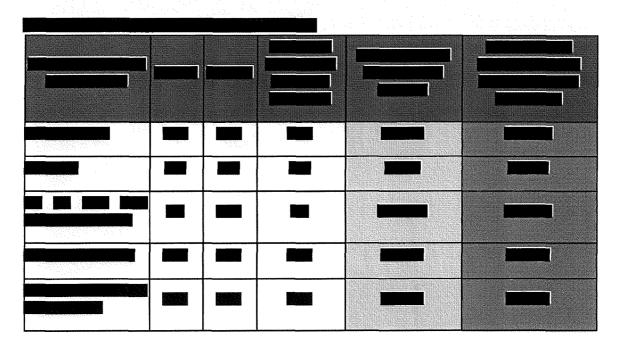


Removal of the temporary spectrum, while the National Disaster is still ongoing, will have a negative impact on Telkom's network and therefore in customers. Both improvement as a result of the

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temporary TDD spectrum and destruction if same is removed, are indicated in Table 2 below.



Impact if FDD temporary licenced spectrum (i.e. 700 MHz and 800 MHz) is removed:

The IMT700 and IMT800 frequency bands are occupied by analogue and digital television transmitters, as reflected in the Terrestrial Broadcasting Frequency Plan 2013, as amended. In accordance with Telkom's Temporary Radio Frequency Spectrum Licence (IMT/TEMP/RF003/APR/20), sharing and coexistence in these bands are to be implemented systematically through a geographic separation of mobile IMT systems and broadcasting services (para 5.6 of the spectrum licence). If harmful interference is experienced in the IMT700 and IMT800 radio frequency bands, Telkom shall switch off the affecting site and coordinate again with the broadcasters (para 5.7 of the spectrum licence).

Telkom did extensive analysis and calculations pertaining to the coordination of its planned mobile system deployments with the existing broadcasting systems deployed in the 700 MHz and 800 MHz frequency bands. Measurements of broadcasting signals were also performed in the field to ascertain the availability of the licenced spectrum for IMT mobile use. Notwithstanding these efforts, harmful interference was caused to some broadcasting systems, which was reported by the Authority and Sentech to Telkom for resolution. Telkom had to switch off 88 mobile base stations in some areas in order to remove harmful interference. In these areas, the use of the licenced spectrum for mobile is not possible due to the presence of broadcasting signals.

The use of 700 MHz and 800 MHz has been limited due to the presence of broadcasting services operating within these bands. In some areas, for example large parts of Cape Town and Pretoria, Telkom could not deploy sub 1 GHz mobile systems due to the presence of broadcasting systems. It

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was therefore impossible for Telkom to implement 700 MHz and 800 MHz optimally at all the critical areas of the network: 45% of intended sites had to be re-planned and re-acquired after interference studies were done together with Sentech.

The below analysis includes the FDD bands namely 700 MHz (2x10 MHz), 800 MHz (2x10 MHz), 1800 MHz (2x10 MHz used for LTE) and 2100 MHz (2x5 MHz used for LTE). Spectrum currently used for GSM and 3G in the 1800 MHz and 2100 MHz bands respectively are excluded.

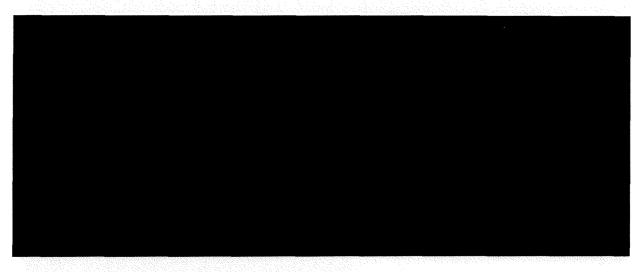
The contribution of LB (low band or sub 1 GHz) traffic, in the limited cases where it was possible to deploy, is indicated in the figure below. The bar graph indicates the number of sites deployed since the licencing of the temporary spectrum,

The impact of COVID-19 lockdown is also clearly visible.

FDD network performance in terms of resource block utilisation and average daily throughput is indicated in Figure 8 below. The impact of the COVID-19 lockdown on the network on daily downlink

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resource block usage and average daily throughput is clearly visible in the figure below.



Removal of the temporary licenced sub 1 GHz spectrum will have a negative impact on Telkom's network and therefore its customers in the limited areas where it could be deployed. It will also negatively impact upon other persons who communicate with Telkom's customers for business, commercial, educational purposes, and also for service delivery purposes. Both the improvement resulting from the grant of the temporary FDD spectrum and negative consequences flowing from the

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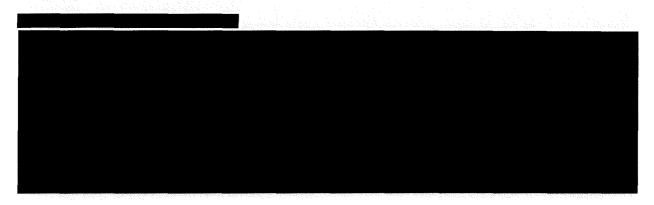
withdrawal or non-renewal of such spectrum are indicated in the table below.

The coverage improvements due to the deployment of sub 1 GHz per province and per area type is indicated in Table 4 below. An improvement of around 131% between 1800 MHz and sub 1 GHz bands are observed through link budget calculations (i.e. cell radius of 1.9 km versus 0.82 km for sub 1 GHz and 1800 MHz respectively). Therefore, where the sub 1 GHz bands are available for mobile

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use, it does improve network coverage and throughput to the benefit of customers in those areas.



Overall impact of temporary spectrum deployment:

Despite significant traffic increases, and associated negative network impacts stated earlier, as stated previously, the temporary spectrum has enabled Telkom Mobile to substantially improve network performance. These notable network improvements have been widely acknowledged by both our customers and the South African media. To determine the effect of the COVID-19 temporary spectrum on Telkom Mobile's network, Mybroadband measured our average network performance across three time periods:

- 1 January to 31 May 2020: Before the temporary spectrum was rolled out
- 1 June to 31 August 2020: Immediately following the roll-out of temporary spectrum
- 1 September to 30 November 2020: The months following this rollout

As captured in Table 5 below, Mybroadband found that Telkom Mobile's network had improved significantly due to the COVID-19 temporary spectrum allocation made by ICASA.

Table 5: Telkom's national network performance impact of COVID-19 spectrum¹

	Before spectrum	Immediately after spectrum	Months after spectrum	Improvement since start of lockdown
Download	20.45 Mbps	23.78 Mbps	27,39 Mbps	34%
Upload	5.01 Mbps	7.20 Mbps	8.14 Mbps	62%
Latency	44 ms	29 ms	29 ms	34%

Telkom Mobile supported Government's emergency crisis management initiatives and improved offerings to connect South Africans during the pandemic, by zero-rating more than 1,000 sites for the

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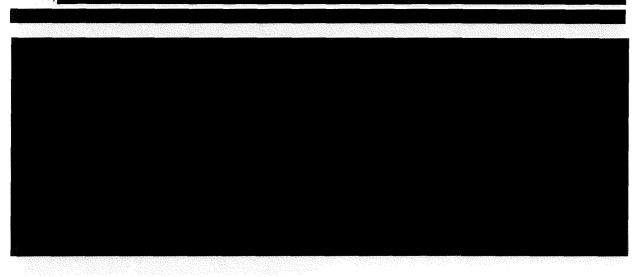


¹ MyBroadband: How additional spectrum improved Telkom's network performance' – 21 September 2020

National Department of Basic Education and Department of Higher Education and Training (DHET). In addition, we also offered substantial discounts on data as follows:

- Data bundles at cost price to all Universities, Technical and Vocational Education and Training (TVET) Colleges
- 40GB2 of data at ZAR99 to identified groups
- 803 779 data bundles offered to multiple Universities in South Africa until March 2021 at discounted price.
- Introduced prepaid LTE offering; starting with a 10GB (5GB + 5GB) LTE product at ZAR99 for both pre-and-post-paid customers and we launched a 1TB package at ZAR999 to support increased requirements for big data bundles.
- Reduced the Business Hours Unlimited LTE package from R599 to R399.

As network expansion continues through the deployment of both current and temporary licensed spectrum, network congestion related complaints have decrease significantly. The monthly customer issues.



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² 20GB Telkom Mobile Anytime Data + 20GB Telkom Mobile Night surfer data

4. SPECIFIC COMMENTS PERTAINING TO THE REGULATIONS

- 4.1. Ad section 8 (Temporary radio frequency spectrum licences)
- (a) Should the Authority consider further extending the duration of the 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.

The Authority seems to suggest that the interim interdict which prohibits it from proceeding with the auction and licensing of the WOAN pending the Court's determination of the reviews launched extends to the use of the temporary spectrum. This is incorrect.

The pending litigation relates to the ITA process and not the temporary assignment of spectrum and the licensing process thereof. The Authority has itself, in the Clarification responses stated that these are two different processes.

Although the Authority refers to "issues raised in the pending litigation", which allegedly impact on the temporary licensing of spectrum, it does not state what those issues are. Neither Telkom nor e.tv in their founding papers referred to the ITA process impacting on the temporary licensing process. The Authority itself, in both its answering affidavits in the pending litigation, did not refer to any issues which relate to or in any way have any effect on the temporary licensing regime. The interim interdict order does not impact on the temporary licensing process and therefore the Authority is not restricted or prohibited from continuing with the temporary licensing of spectrum under the Regulations.

If the temporary spectrum is not extended beyond 31 May 2021, and while the auction has not taken place, the impact on Telkom's network will be severe. Not extending the temporary spectrum will not be in the interest of consumers and the public, who cannot take advantage of this spectrum, which will be unused pending the auctioning of the spectrum. It will also undermine the government's measures to contain the spread of the COVID-19 virus. There is no justification for such action, especially considering the ongoing COVID-19 National State of Disaster. The Authority should assist Government in facilitating the availability and use of digital technologies and ensuring that there is continuation of the provision of services, especially during the ongoing national disaster period.

Telkom proposes that the right of use of the temporary spectrum should be extended as originally contemplated by the Regulator, i.e. until the process of licencing spectrum (through the ITA or other mechanism) to operators has been concluded.

(b) The appropriate extension period.

The temporary spectrum should be extended for at least 3 months after the end of the National State of Disaster or until the licensing of spectrum on a permanent basis have been concluded.

(c) The spectrum fees which should be applicable to the extension period.

Licensees, including Telkom, provide extensive public support during the State of Disaster in the form

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of zero-rating of education and health sites, deployment of virtual classrooms, sending SMS's, etc. With the extension of the use of the temporary spectrum, the Authority decided that spectrum fees must be paid by licensees, without providing any reason for such decision.

Telkom's preference was and remains not to pay for the use of the temporary licenced spectrum but rather to add additional consumer benefits to directly assist South Africans during the pandemic.

If the Authority insists on charging for the use of the temporary spectrum, Telkom supports the calculation of the use of the temporary spectrum fees based on the prescribed regulations. Telkom also supports the "discount" given to the use of the 700 MHz and 800 MHz seeing that these bands are not available nationally for use for mobile services due to the presence of broadcasting services in the band.

The spectrum fees for temporary use of these bands should however not be determined based on the spectrum valuations done by the Authority in preparing for the auction, including the Authority's determined reserve prices for these frequency bands. The spectrum band valuations were done considering the availability of these bands on a national basis and the licencing thereof over a 20-year period. The obligations considered in the ITAs are also different than those applicable under the Regulations and therefore not comparable. There is no relationship between the spectrum valuation done for the auction and the temporary use of these bands for purposes of addressing the National State of Disaster and the former can therefore not be used.

(d) <u>Competition impact and proposed remedies, if any, of the further extension of temporary radio</u> frequency spectrum licences.

Vodacom received the largest portion of the temporary spectrum assignments (i.e. 160 MHz), with MTN a close second (i.e. 140 MHz). Telkom received only 92 MHz (not considering the 2300 MHz band, which is already licensed to Telkom). Liquid and Rain received 4 MHz and 30 MHz respectively.

The Authority determined through its MBSI process that Vodacom and MTN are dominant in the mobile market. The assignment of the bulk of spectrum on a temporary basis to the duopoly, in addition to the access they have to additional capacity through the spectrum arrangements, will further entrench their dominance. This spectrum allowed Vodacom and MTN to deploy 5G services. Telkom cannot match this due to limited 3500 MHz assignment, part of which is available only on a regional basis.

It is not clear to Telkom to what extend Vodacom and MTN use their temporary assigned spectrum in terms of the bands licenced to them or the number of sites where this spectrum has been deployed. Nevertheless, it is clear to Telkom that Vodacom does not use its 2300 MHz temporary assignment as no frequency coordination with Telkom has been done since the licensing of the temporary spectrum. Also, MTN in their application to extend the temporary use of the spectrum, indicated the benefits and use of their 2600 MHz and 3500 MHz temporary assignments. There is however no

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indication that they are using their 700 MHz/800 MHz assignments.

For the benefit of consumers and efficient use of spectrum, Telkom requests the Authority that the 20 MHz temporary assignment of 2300 MHz to Vodacom be revoked and that Telkom be allowed to use this bandwidth to further augment its existing 2300 MHz network. Adding the additional bandwidth (i.e. 13 MHz or 2387-2400 MHz) to Telkom's existing network will cost effectively add additional capacity to its mobile network for purposes of addressing the network requirements of the State of Disaster to the benefit of its customers specifically and consumers in general. Telkom will also be able to assess the compatibility between IMT operating at the top end of the 2300 MHz band and Wi-Fi systems operating in the 2400 MHz band (i.e. in the band 2400-2483.5 MHz).

Also, Telkom may request the Authority to allow it to use its existing 28 MHz licenced in 3500 MHz in areas where it is currently not licensed, as needed. This will allow Telkom to use the temporary licenced 12 MHz more effectively throughout the country where needed (will provide 40 MHz assignment which is not enough for full 5G capability but will allow Telkom to better use this spectrum and start deploying 5G services). Telkom's commercial 5G Proof of Concept (POC) has proven that the additional capacity enabled through EN-DC (E-UTRAN New Radio - Dual Connectivity) deployment together with 2300 MHz has assisted greatly in areas where fixed services can't be deployed quickly. With ongoing COVID-19 waves and associated lockdowns, this remains a key enabler to provide high-speed throughput in specific areas where fibre services can't be rolled out in time.

(e) <u>Consumer benefits in respect of spectrum obligations that the Authority should consider regarding further extension.</u>

As indicted above, the temporary spectrum significantly improved network coverage and capacity and therefore supported the increase network demand while also improving network quality and experience.

Zero-rating of educational sites:

Telkom zero-rated URLs received from the DCDT on behalf of the Department of Basic Education (DBE) and the Department of Higher Education and Training (DHET), where new sites are added on a weekly basis. As on 12 April 2021 a total of 1,002 educational URL's/IP's have been zero-rated. The total data consumed through zero-rated sites as well as the associated monthly costs is reflected in the table below. The total accumulative amount pertaining to zero-rating of sites is almost R212 mil.

	Mar – 20	Apr – 20	May - 20	Jun – 20	Jul 20	Aug – 20	Sep – 20	Oct 20	Nov - 20	Dec - 20	Jan – 21	Feb – 21	Mar – 21
Data Usage	6.47 TB	148.88 TB	118.69 TB	696.99 TB	695.72 TB	796,46 TB	800,83 TB	784.07 TB	927,21 TB	1 273.43 TB	1 266.31 TB	747,20 TB	1820.74 TB
Total Cost R0.02 MB	R 135 734	R 3 122 158	R 2 489 051	R 14 616 9 0 9	R 14 590 398	R 16 702 919	R 16 794 605	R 16 443 157	R 19 445 037	R 26 705 741	R 26 556 396	R 15 669 898	R 38 183 593

The exponential growth in data since middle March 2021 is reflected in the table above where costs

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in March 2021 jumped to R38m.

Telkom has seen some massive volumes in the educational data that we have zero-rated due to some hosting services sharing IPs. The management as well as control of an open-ended zero-rating model is proving both challenging as well as time consuming, very often done on a re-active manner. A traffic analysis performed on top users revealed that several users are using in excess of 100 GB per week accessing zero-rated URL's/IP's.

The uncontrolled explosion in data use through zero-rated sites must be addressed, especially where it is evident that IPs are shared, or non-educational material are downloaded. Whereas some of this growth may be as a result of the academic year starting and therefore more students accessing the zero-rated sites, it may also be due to sharing of IPs for content other than education such as gaming and other non-educational content. It is with this concern in mind that Telkom made some proposals for consideration by the Authority when amending the regulations, which is provided in Telkom's response to section 15 of the Regulations. Telkom is investigating this with the assistance of the DCDT.

In addition to the zero-rating of educational sites, Telkom also provided customers with free access to 187 Government websites and nine COVID-19 websites. Telkom has also, through its subsidiary BCX, partnered with various organizations to make primary and secondary school content available via the www.bcxlearn.com platform.

Zero-rating of COVID-19 sites:

In addition to the zero-rated sites pertaining to health, Government and education, as indicated above, Telkom also zero rated eight COVID-19 specific sites as requested by the DCDT namely:

- COVID-19 Corona Virus South African Resource Portal
- Western Cape Government COVID-19 response
- Mpilo Department of Health App
- Government Corona Virus website
- National COVID-19 screening platform
- National Institution for Communicable Diseases
- National Institute for Occupational Health
- COVID Alert SA

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- 4.2. Ad section 9 (Spectrum pooling arrangements)
- (a) Spectrum sharing / pooling arrangements on a temporary basis which ICASA should consider.

Telkom did not apply for spectrum pooling under the Regulations and does not contemplate this at this stage.

(b) <u>Competition impact and proposed remedies, if any, which ICASA should consider regarding the spectrum sharing arrangements.</u>

Telkom is concerned about the finding by the Authority in the Mobile Broadband Services Inquiry (MBSI) that the spectrum arrangements between the major players and smaller licensees promotes competition. This finding is not backed by any evidence. Telkom reiterates that these arrangements consolidate the duopolistic structure of the mobile market to the long-term detriment of competition in the sector. It is now trite that Vodacom and MTN are dominant and possess significant market power in the markets investigated by the authority. Thus, any arrangement that has the potential to enhance their dominance merits regulatory scrutiny.

Telkom is also concerned that the Authority has also concluded that there has not been any change of control of spectrum licensed to the smaller operators as a result of the arrangements they have entered into with the major players. The Authority made this finding without any regard to any evidence on the mechanics of each of the affected arrangements.

Telkom filed an application with the Competition Tribunal that the Vodacom/Rain spectrum arrangement constitutes a transfer of control and therefore should have been notified. One aspect of the arrangement between Vodacom and Rain possibly indicating a transfer of control, is the implementation of carrier aggregation (CA) between the spectrum licenced to Vodacom and that licenced to Rain. CA is implemented through spectrum pooling. The Competition Commission is currently investigating this transaction. Rain has 20 MHz permanently assigned in the 2600 MHz band while it obtained an additional 30 MHz through the temporary assignments bringing its total to 50 MHz. Vodacom was also assigned 50 MHz in the 2600 MHz band on a temporary basis, which give them potentially access to 100 MHz in the 2600 MHz. Telkom received only 40 MHz temporary assignment in this band.

Telkom understands that MTN applied under the Regulations for implementation of spectrum pooling of their 1800 MHz spectrum and the 1800 MHz spectrum licenced to Liquid Telecom. It is well known that a permanent arrangement between MTN and Liquid involving Liquid's 1800 MHz spectrum have been concluded between MTN and Liquid. Implementation of CA through spectrum pooling by MTN, a dominant player in the market, using the spectrum of a smaller player, will further entrench the dominance of MTN in the market. Access to Liquid's spectrum through spectrum pooling provides MTN a substantial additional advantage over other players, even if for purposes of addressing the

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National State of Disaster.

Approval of spectrum pooling arrangements involving Vodacom and MTN as part of the temporary use of spectrum may further entrench the dominance of Vodacom and MTN and should be considered carefully by the Authority. MTN's access to Liquid Telecoms 1800 MHz spectrum through spectrum pooling, adds to their 140 MHz direct temporary spectrum assignment bringing their total to 164 MHz.

It light of the spectrum pooling and arrangements involving MTN and Vodacom, Telkom requests the Authority to:

- Revoke the 20 MHz in 2300 MHz band licenced to Vodacom on a temporary basis and licence
 this to Telkom. This will allow Telkom to further augment (by an estimated ~15% improvement
 in throughput) its existing 2300 MHz network. Adding the additional bandwidth (i.e. 13 MHz or
 2387-2400 MHz) to Telkom's existing network will cost effectively add additional capacity to
 its mobile network for purposes of addressing the network requirements of the State of
 Disaster to the benefit of its customers specifically and consumers in general;
- Licence an additional 2 X 5 MHz in 800 MHz to Telkom, to allow further expansion of the coverage footprint while the migration of television services have not been finalised. Noting that, apart from Telkom's assignment in the 800 MHz band, the rest of the band has been licenced to Vodacom and MTN, Telkom is prepared to share its use of the proposed additional 2x5 MHz with Vodacom and/or MTN, in areas where they are not using their assignments and where there are no broadcasting systems present. This flexibility may allow Telkom an opportunity to deploy 800 MHz in areas such as Cape Town and Pretoria, if the sharing with broadcasting systems is possible.
- (c) <u>Consumer benefits in respect of spectrum obligations that the Authority should consider regarding the spectrum sharing arrangements.</u>

The MBSI findings document draws the conclusion that because these spectrum sharing arrangements benefit operators, they are beneficial in general, i.e., beneficial to competition and consumers, and not just to operators. It may be in the interests of two operators to share, but the effects thereof may not be in the best interests of consumers. Telkom believes that the Authority must scrutinise these sharing arrangements carefully for potential anticompetitive effects. This is true especially when any such arrangements include spectrum or capacity sharing designed to provide extra capacity to dominant incumbents in a highly concentrated market. If the spectrum arrangements result in the two largest operators further entrenching their market positions, they will boost their profits at the expense of customers and the national economy for many years to come.

Spectrum sharing arrangements by the duopoly allows those operators to add additional capacity to the network in a highly cost-effective manner, thereby catering for the zero-rated obligations more

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easily. National roaming customers, such as Telkom, doesn't have automatic contractual recourse for the zero rating of education and/or COVID-19 related websites used by subscribers during roaming, and therefore must still pay its national roaming partner a wholesale fee for this zero-rated data, even though Telkom provides the data for free. Wholesale operators must therefore also pass the zero-rated benefit to their customers such as Telkom. This will provide an end-to-end zero-rating of access to these web sites.

- 4.3. Ad section 10 (Obligations relating to IMT Radio Frequency Spectrum licensees)
- (a) <u>Consumer benefits in respect of spectrum obligations, including reducing cost to communicate, which the Authority should consider regarding further extension.</u>

Sending SMS:

Telkom collaborates with the Government Communication Information System (GCIS) and Cut2Black, an agency which was appointed by the DCDT, to issue a series of daily Public Service Announcements (PSAs). Telkom sent messages via SMS's based on lists received from Cut2Black.

Telkom has highlighted, as did other licensees, that due to technical capacity limitations, Telkom can send only one PSA or SMS per day to its subscriber base. Telkom request the Authority to amend the Regulations accordingly.

The table below provides a summary of the number of SMSs sent to date.

Description	Volume
COVID-19 Govt SMSs Phase 1	22 400 000
COVID-19 Govt SMSs Phase 2	24 000 000
MMS's Telkom Group - staff messages	229 388
SMBS emailers	1 500 000
COVID-19 Govt SMSs Phase 3	6 000 000
COVID-19 Govt SMSs Phase 4	10 770 000

WASP Services including SMS, SMS Short Codes, USSD and Please Call Me provided (summary of volumes and costs in table below):

- South African Social Security Agency (SASSA): requested Telkom to zero rate the short codes 49953 (SMS), *134*7737# (USSD) and provide BulkSMSes for social relieve grants. This was done through a WASP Always Active Technologies (AAT), which is the WASP of choice for SASSA. Telkom provided a full credit in respect of the AAT account for these services.

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Submission Date: 7 May 2021



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- **Post office:** requested Telkom, through Cellfind (WASP), to zero rate USSD (*130*545#) for social relief grants.
- **DOH:** The Department of Health requested Telkom to send Covid-19 awareness messages via Please Call Me messages.

Month	Shortcode (49953) 0	811601535	USSD (*134*7737	#] 0811606237	USSD(*130*545#)	BulkSMS Bin	d (0811609747)
Apr-20							
May-20	R6 479.72	12 959	R1 588 111.56	1 656 756	R0.00	0	
Jun-20	R11 645.02	23 290	R110 487.93	552 440	R16.00	R99 447.06	552 484
Jul-20	R11 049.46	22 099	R331 118.34	1 655 592	R21.00	R84 188.40	467 713
Aug-20	R8 761.32	17 523	R252 276.56	1 261 383	R6.00	R81 934.98	455 194
Sep-20	R8 688.06	17 376	R87 514.98	437 575	R24.00	R33 407.64	185 598
Oct-20	R17 347.74	34 696	R55 704.59	27 823	R0.00	R19 802.16	110 012
Nov-20	R19 072,74	38 146	R89 693.31	448 447	R0.00	R23 196.90	128 872
Dec-20	R18 718.08	37 436	R88 443.39	442 217	R0.00	R26 104.98	145 028
Total				R3 073 261.9	12		

Licensees will have to continue sending SMS's pertaining to the National State of Disaster including for example messages pertaining to Governments vaccination programme. It is therefore important that this obligation remains in place.

Data services at reduced prices:

Telkom provides the following to customers:

- 40GB of Data (20GB Telkom Mobile Anytime Data + 20GB Telkom Mobile Night Surfer Data) at R99 to identified groups, mostly comprising public and private institutes from the DHET. Approximately 803 779 bundles were sold at discounted price.
- To further enable connectivity, Telkom introduced a deeply discounted suite of DSL products from R199 for a 4Mbps entry level product.
- Telkom also doubled the speeds for both DSL and Fibre customers at no cost.
- Telkom introduced LTE prepaid propositions commencing at R99 for 10 GB data for both pre- and post-paid customers.
- Telkom launched the 1TB package at R999 in support of big bundle data requirements.
- Reduced the Business Hours Unlimited LTE package from R599 to R399

While the National State of Disaster persist and many people continue to work and study from home,

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they will depend on access to mobile networks for data including streaming of online conferencing systems such as MS Teams, Zoom, etc. Licensees will have to continue providing sufficient mobile network infrastructure, including that provided through the licenced temporary spectrum.

Virtual classrooms:

Telkom is in the process of concluding the necessary vendor and service provider approvals and contracts, where after the deployment of the virtual classroom solution at the identified schools will commence.

4.4. Ad section 11 (Type approval relaxation measures)

(a) The validity period of temporary Type Approval authorisation.

Telkom supports the existing provisions as contained in the Regulations, i.e. that temporary type approval certificates remain valid for 3 months after the end of the National State of Disaster.

Telkom did not make itself use of the temporary type approval regime as per the Regulations. Nevertheless, a vendor of Telkom did use the provisions in the Regulations to obtain temporary Type Approvals on an expedited basis for equipment deployed by Telkom during the National State of Disaster. With the application for temporary type approval, the vendor also applied for the standard Type Approval as per the prescribed regulations. The relaxation of the regime for temporary Type Approval therefore assisted in a fast introduction of equipment to support connectivity under COVID-19. Telkom recommends that the regime for temporary Type Approvals under the Regulations remains in place for the duration of the National State of Disaster.

(b) Decommission period for temporary Type Approved equipment.

According to the Regulations, a supplier needs to obtain type approval of the equipment as per the prevailing Type Approval Regulations, if it wishes to continue using the equipment beyond this period. Sufficient time should be allowed to "normalise" the continued use of temporary type approved equipment, depending on the amount of equipment that was deployed during the National State of Disaster. Rather than decommissioning equipment, suppliers should apply for permanent type approval if the equipment does comply to the prescribed standards.

One of Telkom's vendors did make use of the temporary arrangement for type approval; however, they at the same time also applied for the "permanent" type approval soon thereafter. The equipment deployed are therefore covered through type approval certificates obtained through the normal prescribed processes.

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4.5. Ad section 12 (Complaints resolution)

(a) <u>Timelines required to resolve complaints in light of the eased lockdown restrictions.</u>

Telkom supports the existing provisions as contained in the Regulation 12(1) that Licensees are exempt from resolving complaints within the prescribed time frames. Telkom continues to be met with challenges in gaining access to customer premises where technicians need to conduct on-site testing and, in some instances, customers are not available at the times of the proposed schedules.

To finalize dismantlement requests for fixed services and cancellation of mobile services, Telkom must recover the equipment from customer premises equipment (CPE) / devices and issue the last invoice to be settled by the customers. For fixed, a technician must be dispatched, and for mobile either we send courier to collect the device or ask the customer to drop off the device at a Telkom store. There are instances where technicians struggle to gain entry to customer premises or customers are unavailable. Similarly, for mobile services it takes a while to arrange for collection due to customer unavailability and or customers refusing to drop off the devices at the Telkom Stores leading to delays in resolution turnaround. Repairs are delayed by the collection of CPEs / devices, booking into the warehouse, delivery of the device, and customer availability. These challenges continue to prevail even in lockdown level 1.

To resolve network related complaints such as slow speed, service out of order, network, etc. a technician must be dispatched to do on-site testing / diagnosis. Due to more customers working from home during lockdown, Telkom has experienced network related complaints caused by congestion, which are difficult to resolve speedily. To resolve such, there may be a need for a network / site upgrade, which Telkom may not have planned for in the current financial year. It also takes a while to repair and or replace damaged / vandalised infrastructure either due to budgetary or limited human resources capacity constraints thus affecting the resolution time. Furthermore, the installation of towers and optimisation of signals to improve connectivity and coverage is dependent on spectrum availability. Customers use more data than before from different sites that were provisioned for home use and they now find themselves depleting their data more quickly than before. The replacement of faulty CPEs / devices has also been a challenge as it is dependent on stock availability, scheduling, access to property, and testing of sites. There has been challenges with stock availability (CPEs / devices) from device manufacturers affecting sales requests and activation of services.

Telkom has also seen an increase in billing queries as a result of charges levied for e.g. out of bundle services, reconnection fees for suspensions as customers struggle to pay their bills on time and in full, early termination penalties due to customers cancelling their services due to network related problems, and customer delays in submitting required documents and waiting for the refund to reflect in their accounts. Resolution of fault related/out of service refunds get delayed by technical reports that must be generated after an inspection by a technician. Furthermore, there have been delays with the installation of new services, which depend on customer availability, availability of Openserve technicians, and infrastructure availability; problems with access to premises and scheduling of

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appointments delays installation. Time to install new services are sometimes delayed by a limited number of technicians servicing more faults.

- 4.6. Ad section 13 (Tariffs and Fees)
- (a) <u>Timelines required to file tariffs and fees in light of the eased lockdown restrictions.</u>

Telkom supports the continuation of the status quo i.e. that tariffs may be lodged with the Authority one day prior to launch, during the period of National State of Disaster. Telkom used this flexibility to file tariffs on short notice to support consumers during the COVID-19 pandemic. This arrangement should apply for tariff decreases and increases.

- 4.7. Ad section 14 (Deployment of Electronic Communications Facilities)
- (a) <u>Timelines for submission of notifications to ICASA regarding new installations of electronic communications facilities.</u>

Telkom submits reports in this regard frequently on an ongoing basis. However, the prescribed 7-day period for submitting reports is not practical due to the time needed to plan, procure, build and operationalise network equipment. Also, many base stations are upgraded or built at the same time although the project plans and time needed for each will be different. Telkom therefore submitted reports in batches as work was completed, rather than sending a report strictly on a weekly basis. Telkom recommends that the time period either be changed to sending reports "frequently" or "monthly".

- 4.8. Ad section 15 (Zero-rating services)
- (a) Further considerations the Authority should take into account with respect to zero-rating.

Telkom would like to raise the following proposals for consideration by the Authority. The objective would be to ensure that Telkom can continue offering these services for free but simultaneously also limit the financial risk on Telkom:

- In order to prevent Telkom carrying the cost for services where IP's are shared, all the existing and new zero-rated institutes should provide the SNI (Server Name Indication) information for their respective website. This will allow Telkom to reconfigure the service in a more secure manner.
- 2. The requests channelled via the ISPA's are largely unvetted and therefore it does contain

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- some shared IPs, which breakout into peer-to-peer and content applications contributing to the excessive costs. In cases where institutions are using services hosted by cloud providers, these should be highlighted in the request and the relevant SNI information provided.
- 3. The Authority must consider implementing a fair usage policy per individual SIM, that will ensure that all individuals will be able to access the free information while avoiding abuse by some. Consideration should be given to, for example, a 10 GB data cap per month per individual SIM. Also, throttling heavy users is an alternative to be considered to prevent abuse by some users.
- 4. Wholesale operators must also pass the zero-rated benefit to their customers. Currently, Telkom must still pay its national roaming partner a wholesale fee for this zero-rated data, even though Telkom provides the data for free. The proposal is that for zero-rated data, wholesale cost between operators should also be zero-rated.

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ICASA outlines plans for the expedited licensing of high demand spectrum and the Wireless Open Access Network

Pretoria – The Independent Communications Authority of South Africa (ICASA/the Authority) wishes to advise stakeholders of the truncated timetable and roadmap for the expedited licensing of the International Mobile Telecommunications ("IMT") spectrum, also known as high-demand spectrum, and the Wireless Open Access Network ("WOAN") published today, 1 October 2021.

This roadmap follows the consent order granted by the North Gauteng High Court on Wednesday, 15 September 2021, which ended the litigation instituted against the Authority by Telkom and e.tv.

The Court granted an Order to review and set aside the Authority's decision to publish the Invitations to Apply ("ITA") for both the high demand spectrum and WOAN. The Court further directed that the matter be referred to the Authority for reconsideration. "In framing the truncated timetable and roadmap, the Authority was mindful of the need for the expedited licensing process to be completed with exigency whilst adhering to a comprehensive and transparent consultative process," says ICASA Chairperson, Dr Keabetswe Modimoeng.

According to the Chairperson, the Authority is embarking on a process to consult stakeholders on key aspects pertaining to the expedited licensing process for high demand spectrum and the WOAN including, amongst others, implications of the release of high demand spectrum (and licensing of the WOAN) on competition in the market, the radio frequency bands to be licensed, in view of the yet to be completed digital migration process, and the nature and extent of obligations to be imposed, etc. Pursuant to the consultation process, the Authority may amend and/or re-issue the ITAs with a view to conducting an auction by the end of the current financial year.

Dr Modimoeng expressed his gratitude to the parties to the litigation for not opposing the Authority's consent order, thus enabling the Authority to embark on this revised process with a view to finally get the spectrum licensed on a long-term basis and in line with best regulatory practice. "We are indeed grateful to everyone

who participated in bringing the matter to finality. All things being equal, we envisage to licence the IMT spectrum no later than end of March 2022," says Modimoeng.

The Chairperson further says that ICASA remains resolute in ensuring that it discharges its constitutional mandate in a fair, open and transparent manner, and for the benefit of all South Africans. "We would like to urge all interested stakeholders to participate fully in this consultative engagement and to engage openly and robustly to ensure that no further impediments are placed in the way of the finalisation of this critical economic intervention," states the Chairperson.

In conclusion, Dr Modimoeng makes an appeal to stakeholders to accept the published timetable / schedule for both licensing processes, to avoid unduly delaying the release of this much needed economic stimulus input.

To this end, the Authority has outlined the truncated timetable and milestones for the process as set out below.



Schedule for the expedited licensing of IMT spectrum

Key Activities	Envisaged Dates
Publication of the Information Memorandum ("IM") for Consultation	01 October 2021
Workshop on the IM	15 October 2021
Closing date for receiving public representations to the IM	01 November 2021
Publication of 2nd IM for consultation	15 November 2021
Closing date for Comments	29 November 2021
Publication of the ITA	10 December 2021
Closing date for receiving new and revised applications to the ITA	31 January 2022
Announcement of qualified bidders	21 February 2022
Start of the Auction process	01 March 2022

Schedule for expedited licensing of the $WOAN\,$

Key Activities	Envisaged Dates
Commencement of process to reconsider the composite ITA for an individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licence for the purpose of operating a Wireless Open Access Network (WOAN)	01 October 2021
Publication of a consultation document in respect of the draft amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	19 November 2021
Closing date for receiving written representations on the consultation document in respect of the composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	10 January 2022
Publication of amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN.	15 November 2021
Public Workshops on the amended composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a WOAN	15 March 2022



Closing date for receipt of applications in response to the composite ITA for I-ECNS and Radio Frequency Spectrum Licences for the purpose of operating a

13 May 2022

WOAN.

The Authority shall not grant extensions on the above-mentioned key activities and timelines.

Ends...

For all media enquiries, please contact:

Paseka Maleka

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Group Chief Executive Officer

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08 September 2021

The Chairperson
Independent Communications Authority of South Africa
350 Witch-Hazel Avenue
Eco Point Office Park
CENTURION
0154

Via email:

chairperson@icasa.org.za

Dear Dr Modimoeng

RE: AMENDMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY ("ICT") COVID-19 NATIONAL DISASTER REGULATIONS

- 1. I refer to the above and the regulations published by ICASA Notice No 785 (Government Gazette No 45069) dated 31 August 2021 (the "Notice"). The Notice indicates that the regulations published thereunder amend the ICT COVID-19 National Disaster Regulations published in Notice No 238 (Government Gazette No 43207) dated 6 April 2020 (the "ICT COVID-19 Regulations"), as amended, in terms of section 4(7)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).
- 2. We find the above amendment, and specifically the intention to terminate the validity of all radio frequency spectrum licences assigned pursuant to sub-regulations (3) and (4) with effect from 30 November 2021, to be of great concern.
- 3. As the Authority will be aware, the temporary spectrum licences were awarded pursuant to the Authority having given consideration to the Electronic Communications, Postal and Broadcasting Directions (the "Ministerial Directions") issued by the Minister of Communications and Digital Technologies in terms of Regulation 10(8) of the Regulations promulgated under the Disaster Management Act, No 57 of 2002, in Notice No 417, Government Gazette No 43164 dated 26 March 2020.
- 4. The purpose of the Ministerial Directions (set out in Directive 4) is, amongst other things, aimed at "ensuring smooth operations of electronic communications ... as essential services during the disaster period." (own emphasis)

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- 5. To the above end, Directives 6.9 to 6.11 deal with issues relating to radio frequency spectrum, with Directive 6.11 specifically stating that the aim is to provide such frequency spectrum to licensees who would use such frequency spectrum "... for the duration of the COVID-19 national disaster..."
- It was thus no surprise that the ICT COVID-19 Regulations state, at regulation 2 thereof. 6. that the purpose the ICT COVID-19 Regulations is, amongst others, to "...(b) enable the facilitation of the national response to the National Disaster and post-disaster recovery and rehabilitation;" (my emphasis)
- 7. The ICT COVID-19 Regulations go on, at regulation 6, to state as follows:
 - "6. ACCESS TO RADIO FREQUENCY SPECTRUM

Temporary assignment of Radio Frequency Spectrum

- (1) During the National State of Disaster, any licensee may apply to the Authority to dispense with the prescribed licensing procedures for the licensing of the Radio Frequency Spectrum, including high demand spectrum, in order to enable it to deal with the anticipated rise in demand for network capacity or data services.
- (2)
- (6) Subject to sub-regulation (7), any radio frequency spectrum assigned temporarily to licensees in terms of sub regulations (3) and (4) shall be revoked upon the expiry of three (3) months of termination of the National State of Disaster." (own emphasis)
- Further, in its media statement issued on 17 April 2020 following the issuing of temporary 8. radio frequency spectrum, the Authority made the following telling statements:
 - The media statement was entitled "ICASA issues temporary radio frequency spectrum to qualifying applicants in an effort to dealing with COVID-19 communication challenges";
 - "The Authority has considered applications for temporary radio frequency spectrum assignments in the 700MHz, 800MHz, 2300MHz, 2600MHz and 3500MHz bands, including the use of Television Whitespaces (TVWS) in an effort to ensure connectivity for all during the National State of Disaster period." (own emphasis);
 - The Conclusion stated that "The Authority exercised extreme care in the assignment of this temporary spectrum to existing licensees in order to achieve the objectives of the COVID-19 Regulations which are aimed at alleviating network challenges, easing congestion and ensuring good quality of service for consumers"; and
 - The then Acting Chairperson of ICASA stated "I would really like to express my deepest gratitude to all applicants and licensees alike; and I believe the spectrum will be used efficiently as well as optimally for the benefit of all South Africans. This will indeed bridge the communications divide during this difficult period of our lifetime".







Telkom

- With respect, we believe that the Authority correctly assessed not only the rationale for the issuing of temporary frequency spectrum licences, but also the duration for which this action would be required, namely for the duration of the National State of Disaster.
- 10. Lastly, in a letter, dated 21 April 2020, from the Authority to Telkom, the then Acting Chairperson of ICASA stated at paragraph 10 of the letter that "The purpose of the COVID-19 Regulations is to, amongst others; make provisions for relaxation of all provisions of the regulations in force that impede the release of radio frequency spectrum in the IMT 700/ 800/ 2300/ 2600 and 3500 bands on a temporary basis <u>during COVID-19 national disaster period</u>. (own emphasis)
- 11. It should therefore be of no surprise that Telkom is now astounded and taken aback by the sudden and dramatic change in attitude by the Authority.
- 12. In addition to the serious concerns we have regarding the sudden change of attitude, we are struck by the publication of the latest amendment to the ICT COVID-19 Regulations without any opportunity being provided to licensees to make any representations on this course of action by the Authority.
- 13. Whilst we do not intimate that this is an exhaustive list, issues that Telkom would have brought to the Authority's attention prior to embarking on this course of action include:
 - a. The ongoing state of national disaster with clear indications that we can expect a fourth wave of infections, which will continue to require licensees to support remote working and learning, without which, there will surely be a data deficit;
 - b. The services being rendered through use of the temporary frequency and the adverse effect on consumers should this be discontinued (decrease in network capacity, performance and coverage, etc);
 - c. The contribution made by Telkom in exchange for the use of the temporary spectrum;
 - d. The Authority and the public will suffer no prejudice but instead will continue to benefit from the use of the temporary spectrum during the state of national disaster:
 - e. The disruption and inefficiencies that will be created by the return of the temporary spectrum to the Authority;
 - f. Prejudice to Telkom and its customers, as without the use of temporary spectrum, Telkom will be the only network provider without access to sub 1 GHz but required to cope with the unprecedented demands on its network imposed by the realities of the Covid 19 pandemic; and
 - g. The extensive capital already invested by Telkom in deploying the temporary frequency spectrum to deal with the new normal introduced by Covid 19.
- 14. We re-iterate our intentions to always endeavour to maintain a cooperative relationship with the Authority, and we sincerely believe that this can be maintained for as long as the Authority and industry keep an open line of communication on all major issues.

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- 15. Having said the above, I trust that the Authority is keenly aware of the critical importance of the rights that licensees have to the spectrum licenced to them, even if on a temporary basis such as in the present instance. In the present instance, the issues go even further than just the rights of licensees and extends to the benefit of consumers and the economy as a whole during the National State of Disaster.
- 16. The benefit to consumers and the economy always enjoy an elevated position of importance in any matter of regulation, and in the situation that our country currently finds itself in this cannot be overstated.
- 17. This situation will most likely endure for some time, but most certainly whilst the State of Disaster remains in place. It is surely on all of our shoulders to do all things within our power not only to address the hardships occasioned by the State of Disaster, but to work tirelessly to assist the country to recover from the effects of the current pandemic and to go on to grow beyond the point at which we found ourselves before the onset of the pandemic. Actions such as those contemplated in the Authority's latest amendment of the ICT COVID-19 Regulations will most certainly not have any of the desired effects, but on the contrary, will only exacerbate the negative effects of the current pandemic.
- 18. In the circumstances, we request the Authority to urgently confirm that it will not terminate the validity of the temporary radio frequency spectrum licences as contemplated in the Notice.
- 19. Telkom and the Authority are already embroiled in litigation regarding the issue of radio frequency spectrum and it is not our desire to add to that. We sincerely hope and trust that the current issue can be resolved amicably.
- 20. Please note, however, that Telkom will be compelled to take such steps as are necessary in the circumstances to protect its rights, all of which must remain expressly reserved.
- 21. In the circumstances, kindly urgently revert to Telkom, by no later than 17:00 on 10 September 2021, with confirmation that the Authority will urgently take such actions as are required to ensure that the temporary radio frequency spectrum licences will not be terminated as contemplated in the Notice.
- 22. We remain available to engage with the Authority on this issue.

I trust the Authority finds the above in order.

Regards

Sipho Maseko

Group Chief Executive Officer

Copy: Mr Willington Ngwepe

Via email: ceo@icasa.org.za

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Independent Communications Authority of South Africa

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> > Ref: 1/6/44

Mr. Sipho Maseko

Group Chief Executive Officer Telkom SOC Ltd 61 Oak Avenue Techno Park Centurion 0157

PER EMAIL: BeukesME@telkom.co.za

Dear Mr. Maseko

AMENDMENT OF INFORMATION AND COMMUNICATIONS TECHNOLOGY ("ICT") COVID-19 NATIONAL STATE OF DISASTER REGULATIONS

- We refer to your letter to the Independent Communications Authority of South Africa ("the Authority") dated 8 September 2021 in relation to the subject matter and note the issues raised.
- 2. The Authority is closely monitoring all aspects related to the pandemic and its effect on the industry and has taken a decision as articulated in the Sixth Amendment ICT COVID-19 National State of Disaster Regulations published in *Government Gazette* No. 45069 on 31 August 2021.

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- 3. The Authority is currently focused on undertaking a process to license spectrum on a permanent basis and in a transparent manner.
- 4. We trust that you will find the above in order.

Yours sincerely

Dr Keabetswe Modimoeng

Chairperson

Date: 10/9/2021

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DELIVERED BY EMAIL

Dr Keabetswe Modimoeng The Chairperson of the Independent Communications Authority of South Africa

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16 September 2021

Dear Sirs URGENT

NON-EXTENSION OF TEMPORARY RADIO FREQUENCY SPECTRUM LICENCES

- 1 We act on behalf of Telkom SOC Limited ("Telkom" / "our client").
- The previous correspondence between our client and yourselves, in particular the letter dated 8 September 2021 from our client ("8 September letter") and your response thereto dated 10 September 2021 ("10 September letter"), refers. You will be aware that such correspondence relates to the notified decision by the Independent Communications Authority of South Africa ("ICASA") not to extend the temporary radio frequency spectrum licences ("temporary spectrum licences") that have been licenced to various mobile network operators, including our client.
- Pursuant to the 10 September letter, and the indication therein that ICASA is currently focused on undertaking a process to licence spectrum on "a permanent basis and in a transparent manner", we have been instructed by our client to urgently seek clarity in to regard the nature of the process undertaken and to be undertaken by ICASA to address the concerns thus far articulated by our client, as related to the COVID-19 pandemic and the declaration of a national state of disaster. We do not understand you to be disputing the concerns raised and identified by our client, nor to disagree on

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RN Wakefield DC Walker L Watson D Weglerski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies Consultant DH Rabin



the need to urgently address and make provision for the prevailing circumstances and needs. These are once again summarised below.

THE UNDERLYING PURPOSE AND NATURE OF TEMPORARY SPECTRUM

- As you are aware, at the advent of the COVID-19 national disaster, the Minister of Communications and Digital Technologies ("Minister") issued Electronic Communications, Postal and Broadcasting Directions ("Directions") in terms of Regulation 10(8) of the Disaster Management Act 57 of 2002 ("DMA Act"), the purpose of which were to, amongst other things:
- 4.1 ensure the smooth operations of the electronic communications industry as essential services during the disaster period;
- enable electronic communications service licensees and other service providers to rapidly deploy networks and facilities as contemplated in the Electronic Communications Act 36 of 2005 ("ECA"); and
- 4.3 remove obstacles associated with the rapid deployment of electronic communications services.
- 5 In respect of the availability of communications and digital services, the Minister directed ICASA as follows:
 - "6.9 For the duration of the COVID-19 national disaster, the Authority must prioritise the regulatory framework application to the management and licensing of radio frequency spectrum that would enable implementation of this direction on an urgent basis.
 - 6.10 To the extent possible, the Authority must relax spectrum regulations to enable the temporary licensing of all available spectrum bands including the unassigned high demand spectrum for the duration of the COVID-19 national disaster.
 - 6.11 <u>The temporary assignment of the unassigned high demand frequency spectrum must be</u> focused on those licensees that will be able to implement and use assigned frequency spectrum for duration of the COVID-19 national disaster on an expeditious basis. Frequency coordination and planning will be necessary to effect this assignment." (own emphasis)





- Prior to the issuing of the Directions, the Acting Chairperson of ICASA, as he then was, had addressed a communication to "All ECS and ECNS Licensees", in which ICASA recognised the inevitable increase in data usage by consumers due in large measure to people working and studying remotely from home and on-line, public gatherings being limited, and certain events being cancelled. In the same communication, ICASA recognised the adverse impact that COVID-19 would have on the economy.
- In a media release dated 19 March 2020, ICASA informed the entire country that "the Authority is engaging the sector on possible ways of radio frequency spectrum relief for the duration of the declared state of disaster to ease congestion, ensure good quality of broadband services, and enable licensees to lower the cost of access to consumers.".
- It is uncontentious that the COVID-19 pandemic has brought with it a significantly pronounced demand for data and broadcasting services, which require intervention by ICASA in order to mitigate the negative consequences of such pronounced demand on infrastructure and capacities that would otherwise be ill-equipped to provide for it.
- 9 The ICT COVID-19 National State of Disaster Regulations ("the Regulations") allowed for the temporary licensing of radio frequency spectrum, "aimed at mitigating the impact of the National State of Disaster, following the outbreak of COVID-19 in 2020, mainly by easing network congestion, maintaining good quality of broadband services, and enabling licensees to lower the cost of access to consumers." The temporary licences that were issued were initially valid until 30 November 2020.

EXTENSIONS TO THE VALIDITY PERIOD OF THE TEMPORARY SPECTRUM LICENCES

10 In a media statement published by ICASA dated 27 November 2020, ICASA extended the validity period of temporary spectrum licences from 30 November 2021 to 31 March 2021, stating:

"In light of the fact that the auctioning of the high demand spectrum will occur in March 2021, the Council of the Independent Communications Authority of South Africa (ICASA/Authority) has approved the amendment of the ICT COVID-19 National State of Disaster Regulations in order to extend the validity period of the temporary assignment of radio frequency spectrum ("temporary spectrum") to no later than 31 March 2021..."

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¹ ICASA Media Release dated 22 April 2021: "ICASA publishes a Call for Comments on the ICT COVID-19 National Disaster Regulations".



- 11 Following an urgent application by our client, and an interim interdict prohibiting ICASA from proceeding with the International Mobile Telecommunication ("IMT") spectrum licensing process (a matter largely unrelated to the temporary licensing of radio frequency spectrum pursuant to the COVID-19 pandemic), ICASA published a media statement dated 26 March 2021 extending the validity of the temporary spectrum licences for a further period of two months from 1 April 2021 to 31 May 2021.
- 12 In this media statement, ICASA stated the following:

"Following the expiry of the temporary spectrum extension on 31 May 2021, the Authority will embark on a comprehensive review of the Information and Communications Technology (ICT) COVID-19 National Disaster Regulations, which include the radio frequency spectrum extensions, as well as the relaxation of compliance requirements in respect of local content for broadcasters and type-approval obligations."

13 The Chairperson of ICASA, Dr Keabetswe Modimoeng ("**Dr Modimoeng**"), is further quoted in the media statement as follows:

"As mobile network operators continue to provide services while deriving commercial value from this high value spectrum resource, we need to delicately apply ourselves on these extensions in a manner that is justifiable and primarily beneficial to the South African public. We will be doing so over the next two months while expediating our appeal process on the formal licensing court interdict. Industry needs to dig deep and assist the process further by modelling best pro-consumer offerings on the back of these temporary licences."

- On 23 April 2021, ICASA issued a notice requesting written representations from interested parties and members of the public on the issues that should be considered regarding the review of the Regulations. Amongst these issues was the question of whether ICASA should extend the duration of temporary spectrum licences beyond 31 May 2021.
- In its written response, Telkom highlighted, amongst other things, the consumer benefit (and related benefit to the economy) that has been occasioned by the allocation of temporary radio frequency spectrum. This benefit is enjoyed by, *inter alia*, businesses, students who rely on zero-rated educational content and those who require access to healthcare sites. As long as the COVID-19 pandemic and the declaration of the national state of disaster persist, ensuring these benefits remains crucial.





- 16 The various benefits outlined by Telkom to ICASA have also been articulated by various other stakeholders, including those who made submissions in response to ICASA's request.
- 17 ICASA itself acknowledged the need for temporary spectrum licensing in the litigation against Telkom and e.tv, under case number 66778/2020 ("the Telkom/e.tv application"). In support of ICASA's application in terms of section 18(2) of the Superior Courts Act 10 of 2013, the founding affidavit deposed to by Dr Modimoeng stated as follows:

"The COVID-19 pandemic has forced the general public to rely on the electronic communication services to access a long list of services such as health services and related information, banking services and general electronic communication services. In addition, people are generally working from home and this is not going to slow down in the near future. All of these require high demand spectrum to enable the majority of the people to access these services without any difficulties.

The negative consequences of the further delay in auctioning high demand spectrum are going to be unprecedented when regard is had to the impact of the COVID-19 pandemic on the use of the electronic communication services. The more people work from home, study from home, receive lectures from home, bank from home, buy things from home using electronic communications facilities, the more stretched the available spectrum capacity is going to be and that is going to result in poor quality services to the detriment of the general public.

The COVID-19 pandemic has increased the demand for the use of electronic communication services and this requires additional spectrum to be freed. There is a general acceptance that the third wave of COVID-19 will hit the country in the near future and that the COVID-19 pandemic itself is not going to be eliminated anytime soon. The government will not be able to vaccinate 67% of the population by the end of the year as originally intended. All of these indicate that there is going to be more reliance on electronic communication services and the ability to provide such services largely depends on the availability of spectrum..."

On 27 May 2021, ICASA published a media statement advising that it had completed the review of the Regulations and "having considered all the written submissions received within the stipulated deadline, resolved to, among others: extend the temporary radio frequency spectrum assignments issues to licensees for a further three months (from 1 June 2021 to 31 August 2021)". No reasons





were provided by ICASA for this extension, save for the following which appears from the media statement:

"The Authority hopes that all key stakeholders will use this period to find a resolution to the spectrum litigation impasse. The Chairperson of ICASA, Dr Keabetswe Modimoeng urges active litigants to participate in the ongoing settlement negotiations in order to resolve the matter."

19 Dr Modimoeng is further quoted as follows in the media statement:

"The three-month extension affords an opportunity for all stakeholders to find a resolution to the spectrum litigation impasse. Unfortunately, at some stage we will not be able to continually extend these temporary spectrum assignments when a more permanent licensing route is struck (sic) through litigation. We need to come to the negotiations with well-meaning intentions, as soon as possible, to resolve this ongoing legal stand-off. We cannot perpetuate a pandemic-specific temporary arrangement to a point where it amounts to a backdoor spectrum licensing regime. High-demand Spectrum ought to be licensed in a transparent and competitive manner; hence any other way is unjustifiable in the long run."

- The above-mentioned media statement, again, ties the allocation of temporary radio frequency spectrum to the IMT spectrum licensing process. Concerningly, it appears that ICASA is of the view that the temporary allocation of spectrum amounts to a backdoor spectrum licensing regime notwithstanding that there can be no denying that the COVID-19 pandemic continues to prevail and that the litigation to which ICASA refers has been in vindication of legally recognised rights held by Telkom and other licensees.
- ICASA has now announced that there will be no further extensions to the validity period for temporary spectrum licences and that licensees must wind up all relevant operations by 30 November 2021. It is plain however that the circumstances under which the temporary licensing of radio frequency spectrum became necessary in the first instance are still in existence and will continue to be so even after 30 November 2021. This is of particular import given the projections that there will be yet another wave of infections as the year reaches its end (and additional restrictions to be imposed as a result). The basis upon which ICASA has determined that there are to be no further extensions to the validity period of the temporary licences, beyond 30 November 2021, is thus unclear. It does not appear to be justified on any possible basis.







- In light of the above we are instructed to request, as we hereby do, that ICASA provides our client with the detail of its proposed measures to address the ongoing and increased data usage and demand for broadcasting services occasioned by COVID-19 and the national state of disaster up until the date of the finalisation of the IMT auction process or other permanent allocation of high-demand spectrum. This must no doubt also take into account that ICASA requires current operators to commence with their exit by winding down.
- In the above regard we note that, to date, ICASA has not explained the basis upon which it requires that licensees wind down their use of temporary radio frequency spectrum and terminate same by 30 November 2021. ICASA has, to date, also not detailed the considerations taken into account in reaching such decision.

24 As stated above:

- 24.1 ICASA informed the entire country on 19 March 2020 that is engaging the sector on possible ways of radio frequency relief for the duration of the declared state of disaster to ease congestion, ensure good quality of broadcasting services and to enable licensees to lower cost of access to consumers. There is no explanation from ICASA on what it considered in reaching the decision to not to extend the temporary spectrum licences any further based on the factors stated.
- 24.2 ICASA informed interested parties and the public that it has undertaken a comprehensive approach because it has learnt a lot since the outbreak of the coronavirus pandemic about regulating in a time of crisis, yet no details of the approach or the lessons learnt which have influenced the approach have been provided.
- 24.3 ICASA has not provided the outcomes of the impact of the regulatory interventions in the broader industry and the regulated sector as whole, including consumer protection and benefits.
- The previous extensions were, as indicated above, based purely on the conclusion or settlement of the litigation relating to the Auction ITA and the WOAN ITA. No further explanations were provided by ICASA.
- 26 Notwithstanding that ICASA has indicated in the 10 September letter that it is "closely monitoring all aspects related to the pandemic and its effect on the industry and has taken a decision as articulated





in the Sixth Amendment ICT COVID-19 National State of Disaster Regulations published in Government Gazette No. 45069 on 31 August 2021", no specificity is provided in relation thereto and our client remains in the dark about the nature of the environment in which ICASA contemplates that network operators are to continue to provide services. As highlighted above, the nature of such environment remains fundamentally informed by the national state of disaster and the unique consequences it and the pandemic have occasioned.

- 27 It bears mention at this juncture that the Invitation to Apply for the IMT Auction and the Invitation to Apply for radio frequency spectrum licences for the operation of a Wireless Open Access Network (WOAN) were reviewed and set aside on 15 September 2021. In the result, it is evident that as at 30 November 2021, the process to licence spectrum "on a permanent basis and in a transparent manner" as stipulated in the 10 September letter would not have been concluded.
- In the absence of a permanent licencing process having been finalised by 30 November 2021, any "winding down" in other words, the removal of mobile networks from the relevant temporary bands will negatively impact customers and cause, amongst other things, great instability to service networks and by extension, the economy.
- 29 We wish to remind ICASA of its obligations in accordance with the objects of the Electronic Communications Act 36 of 2005 to:

"ensure efficient use of the radio frequency spectrum" (section 2(e));

"refrain from undue interference in the commercial activities of licensees while taking into account the electronic communications needs of the public" (section 2(y));

and

"promote stability in the ICT sector" (section 2(z)).

We request that ICASA provide the information outlined above, by no later than close of business on Friday, 17 September 2021, failing which our client may be compelled to approach the court on an urgent basis to seek its desired relief.



TELK6044.414/#8031948v1 16092021



Yours faithfully,

Werksmans IncTHIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.





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Temp Spectrum Shutdown Process

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Spectrum Shutdown Process

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Prioritization Temporary Spectrum

Arrangements Pre Shutdown

Shutdown Process

Post Shutdown Analysis

Assurance Customer

- Traffic Analysis Customer

700 / S00Mfrz 2300 Mhz 2600 Mhz 3500 Mhz

- Preparation of Alignment Database
- scripts RED
- Traffic Balancing Veriffication

Months 1st WK

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Throughput

Analysis

Change Request readiness Process

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Impact Analysis

Execute

Traffic Balancing Optimization &

> ranking cells according to

batch

- Management Allgoment Database Capacity

Mean Impact

Cells(Batch1)

Low Impant

Cells(Batch2)

Complaints Customer analysis Resolution plan

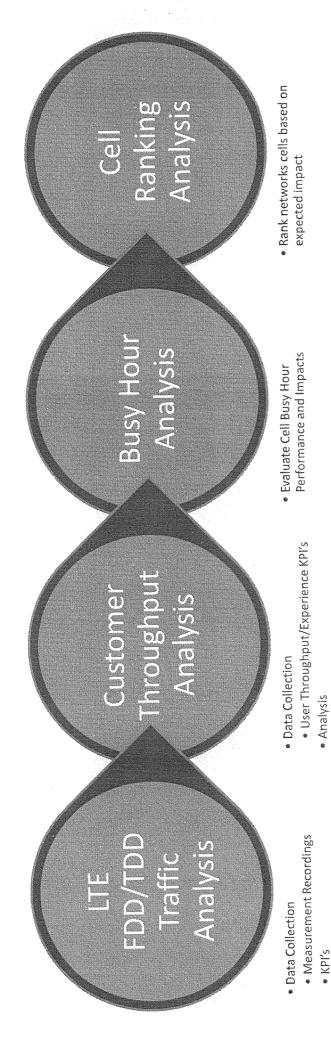
- resolution plan Execution of **Commente**
 - satisfaction Customer checking

based on imp

Impact(Batch3)

Temp Spectrum Prioritization

3 Weeks



Expected throughput degradation for user based throughput

Traffic/coverage losses through

Analysis

spectrum shutdown

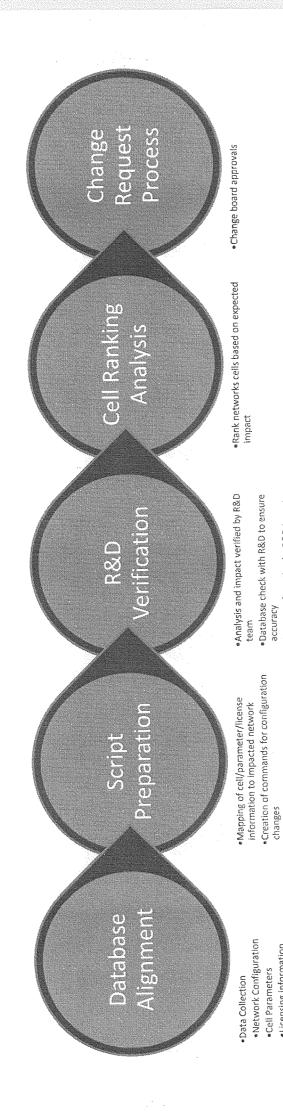
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Pre Shut Down Arrangements

3 Weeks



Exporting and information decryption
 Information preparation

Licensing information
 Information Parsing

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Script confirmation by R&D team to ensure consistency during implementation

accuracy

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Process Shutdown

6 Weeks

 Coverage High Impact Traffic High Impact 15 00 00 E <u>0</u> • Taffic medium impact Medium Coverage Medium User Throughput medium impact mpact Traffic minimum impact User Throughput 00 301 according TXec: Hon ranking

Throughput High Impact

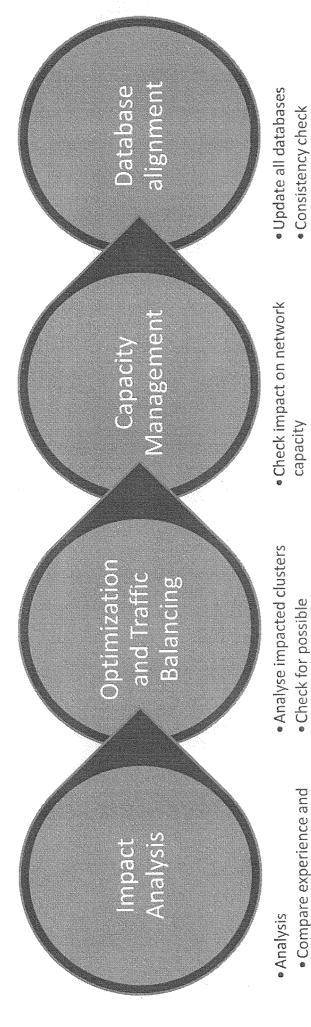
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Post Shutdown Analysis

8 Weeks



 Compare experience and KPI's before and after

optimization actions

Implementation of optimization actions

Identify worst areas

Reactivation of temporary capacity if critical
Plan for alternative capacity solutions where applicable

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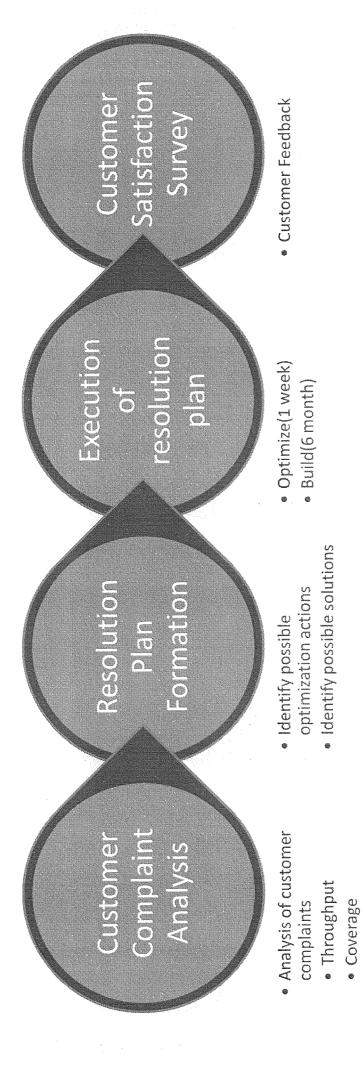
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Customer Assurance

8 Weeks



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Availability

Ltimelines are dependant on the impact and the number of complaints received

Telkom



IN THE HIGH COURT OF SOUTH AFRICA **GAUTENG DIVISION, PRETORIA**

CASE NO.: 49920/2/

In the matter between:

TELKOM SA SOC LIMITED

Applicant

and

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

First Respondent

CHAIRPERSON: INDEPENDENT COMMUNICATIONS

AUTHORITY OF SOUTH AFRICA

Second Respondent

MINISTER OF COMMUNICATIONS AND

DIGITAL TECHNOLOGIES

Third Respondent

VODACOM (PTY) LIMITED

Fourth Respondent

MOBILE TELEPHONE NETWORKS (PTY) LIMITED

Fifth Respondent

LIQUID TELECOMMUNICATIONS SOUTH AFRICA (PTY) LIMITED

Sixth Respondent

SOUTH AFRICA COMMUNICATIONS FORUM

Seventh Respondent

MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

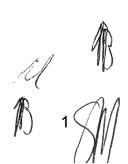
Eighth Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

HUGO VAN ZYL

do hereby make oath and say:



- 1 I am an adult male and a Managing Executive responsible for Telkom's mobile network.
- 2 The facts contained herein, save where the contrary appears, are within my own personal knowledge and are to the best of my belief both true and correct.
- I have read the founding affidavit deposed to by DR SIYABONGA MAHLANGU 3 and I confirm the truth and correctness of the contents thereof insofar as same relate to annexure FA10 in the founding affidavit.

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at ___Saudlou on this the day of OCTOBER 2021, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS Jonathon Robert Beard

Full names:

Commissioner of Oaths

Address:

Ex Officio Practising Attorney R.S.A

30 JELLICOE AVENUE Capacity:

ROSEBANK, 2196, JOHANNESBURG



Independent Communications Authority of South Africa 350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion.

Private Bag X10, Highveld Park 0169

MEDIA STATEMENT

ICASA completes the review of the ICT COVID-19 National Disaster Regulations

27 May 2021

Pretoria – The Independent Communications Authority of South Africa (ICASA/the Authority) has completed the review of the Information and Communications Technology (ICT) COVID-19 National Disaster Regulations (The Regulations) and, having considered all the written submissions received within the stipulated deadline, resolved to, among others: extend the temporary radio frequency spectrum assignments issued to licensees for a further three months (from 1 June 2021 to 31 August 2021).

The Authority hopes that all key stakeholders will use this period to find a resolution to the spectrum litigation impasse. The Chairperson of ICASA, Dr Keabetswe Modimoeng urges active litigants to participate in the ongoing settlement negotiations in order to resolve the matter.

"The three-month extension affords an opportunity for all stakeholders to find a resolution to the spectrum litigation impasse. Unfortunately, at some stage we will not be able to continually extend these temporary spectrum assignments when a more permanent licensing route is struck through litigation. We need to come to the negotiations with well-meaning intentions, as soon as possible to resolve this ongoing legal stand-off. We cannot perpetuate a pandemic-specific temporary arrangement to a point where it amounts to a backdoor spectrum licensing regime. High-demand Spectrum ought to be licensed in a transparent and competitive manner; hence any other way is unjustifiable in the long run." says Dr Modimoeng.

The Authority first published the ICT COVID-19 National Disaster Regulations on 6 April 2020 following the outbreak of the coronavirus pandemic. Pursuant to the publication of these Regulations there have been various adjustments of the lockdown levels by the National Command Council, which ICASA continues to observe. "It has been over a year and the government - guided by scientific evidence - has also been extending the national disaster period on a month-to-month basis, which is clearly an indication that there is no permanence in this regard." adds Dr Modimoeng.



On 23 April 2021, the Authority published a Notice on the review of the Regulations in the Government Gazette, seeking written submissions from interested stakeholders in an effort to comprehensively review the current Regulations. The Authority has since received written submissions in that regard.

Following consideration of written submissions, the Authority resolved to make amendments to the Regulations. These amendments include, amongst others, the following:

- 1. Assignment of the temporary radio frequency spectrum which has now been extended for three months;
- 2. Current spectrum pooling arrangements the duration of all spectrum sharing agreements approved by the Authority pursuant to these Regulations shall not exceed the duration of the temporary radio frequency spectrum licences;
- 3. Obligations attendant upon temporarily assigned spectrum all licensees assigned with temporary spectrum must maintain network connectivity in line with regulatory requirements for the virtual classroom platforms allocated respectively to them by the Authority, free of charge, for a period of seventeen (17) months from the date of confirmation of deployment by the operator;
- 4. Type-approval relaxation measures type-approved equipment that operates in the radio frequency spectrum that is temporarily assigned in terms of these Regulations shall be decommissioned within three (3) months after the expiry of the temporary radio frequency spectrum licences; and
- 5. Broadcasting services and related matters television broadcasting service licensees are exempted from compliance with specific advertising requirements in terms of their licence conditions. However, television broadcasting service licensees shall comply with the local television content quotas during the National State of Disaster, to the extent reflected in the Regulations. On the other hand, the suspension of the requirement for community broadcasting service licensees to hold any community meetings or AGMs and to submit proof of holding such meetings is lifted. In exceptional circumstances, where it is not possible for a community broadcasting service licensee to hold a community meeting or AGM, such licensee must submit proof to the Authority at least twenty-one (21) working days before the date specified in its constitutive documents for holding the community meeting or AGM.

Broadcasting service licensees play a critical role in the dissemination of information about the Covid-19 pandemic and related public announcements. Dr Modimoeng encourages broadcasters to ensure that they adhere to the new adjustments on, among others, local content, as well as the requirements to ensure that information reaches all sectors of society, including persons with disabilities.





For all media enquiries, please contact:

Paseka Maleka

Tel : (012) 568 3455 Cell : 079 509 0702

E-mail: pmaleka@icasa.org.za

Find us on the following social media platforms and website:

Twitter and Instagram: @ICASA_org Facebook : icasa.org

LinkedIn and YouTube: ICASA

Website : www.icasa.org.za







Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park Eco Park, Centurion. Private Bag X10, Highveld Park 0169

MEDIA RELEASE

ICASA prescribe fees for the extended use of the temporary radio frequency spectrum

27 November 2020

Pretoria – In light of the fact that the auctioning of the high demand spectrum will occur in March 2021, the Council of the Independent Communications Authority of South Africa (ICASA/Authority) has approved the amendment of the ICT COVID-19 National State of Disaster Regulations in order to extend the validity period of the temporary assignment of radio frequency spectrum ("temporary spectrum") to no later than 31 March 2021. The initial date within which the temporary spectrum was supposed to be returned to the Authority was 30 November 2020.

The Council has also resolved that all licensees who have been assigned temporary spectrum and wish to continue using it for extended period (i.e. until 31 March 2021) will be required to pay the prescribed radio frequency spectrum license fees.

In releasing the initial temporary spectrum to meet the high demand of services during high levels of the lockdown and the national state of disaster, the Authority did not require any payment of fees for use of such spectrum. "We are aware that licensees generated and reported revenue growth during this period. We have therefore resolved that, in addition to fulfilment of the obligations imposed with the release of temporary spectrum, the extended use of spectrum must be at a fee as provided for in the amended regulations", says ICASA Chairperson, Dr Keabetswe Modimoeng.

As regards spectrum sharing arrangements which may have been implemented in accordance with regulation 6(10), (11) and (12) of the ICT COVID-19 National State of Disaster Regulations, the Authority advises that the continued validity of such arrangement is to be subject to specific renewal and/or approval process by the Authority.

The Authority hereby reminds prospective applicants for the radio frequency spectrum for International Mobile Telecommunications (IMT), that the closing date remains 28 December 2020 at 16h00. Furthermore, the prospective applicants are advised to request invoices for the prescribed application fee on the email address provided in the Invitation To Apply (ITA).



Finally, the Authority confirms that the Reasons Document on the ITA for IMT Spectrum and the WOAN will be released by no later than the 4th of December 2020.

On the other hand, following the release of the ITA for the Individual Electronic Communications Network Service Licence (I-ECNS) and the Radio Frequency Spectrum Licence for the provision of a Wireless Open Access Network (WOAN) on 2 October 2020, the Authority will be conducting virtual workshops from 9 to 11 December 2020 in respect of this ITA.

These workshops are intended to provide a platform and opportunity for prospective applicants to unpack the requirements of the WOAN ITA and to ensure a successful licensing process. The link to the workshop shall be communicated in due course.

"We allowed for clarity seeking questions on the IMT ITA and provided responses in this regard. We believe that the workshops and the responses will go a long way in providing clarity for all interested stakeholders and ensure that the process is fully understood and give effect to procedural fairness and administrative justice", concludes Dr Modimoeng.

The Authority remains committed to its plans to licence radio frequency spectrum for IMT and the WOAN and would like to ensure procedural fairness in that regard.

Ends...

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LinkedIn and YouTube : ICASA

Website : <u>www.icasa.org.za</u>



No. 44488 3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA NOTICE 226 OF 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

2

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.
- fine 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.
- The Authority does not intend to further extend the expiry date of the 8.7 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 Covid-19 management, and notifications of all in relation to 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:

Consumer benefits in respect of spectrum obligations, including (a) 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:

- The validity period of temporary Type Approval authorisation. (a)
- (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:
 - 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:
 - Suspension of submission of logs and recordings to ICASA in light (a) 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.
- **Submission of Applications** 20.
- 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



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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.