



## Independent Communications Authority of South Africa

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Centurion

### COUNCIL DECISIONS– 20 MAY 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Fifth Amendment to the ICT Covid-19 National Disaster Regulations</p> <p>The purpose of the submission was to request Council to approve the amendments to the Information and Communications Technology (ICT) COVID-19 National State of Disaster Regulations (COVID-19 Regulations).</p> <p>1.1. On 6 April 2020, the Authority published its first COVID-19 Regulations. The purpose of the COVID-19 Regulations is to prescribe minimum standards that Licensees must adhere to during the subsistence of the National State of Disaster in order to:</p> <p>1.1.1 facilitate the dissemination of information during the National Disaster period;</p> <p>1.1.2 enable the facilitation of the responses to the National State of Disaster;</p> <p>1.1.3 enable the implementation of measures that may be necessary to prevent an escalation of the National Disaster, or to alleviate, contain and minimise the</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>effects of the National Disaster; and</p> <p>1.1.4 ensure that there is a continuation of, and the provision of, ICT services in the Republic.</p> <p>1.2. Since 6 April 2020, the Authority has reviewed, and amended the Regulations three times, in line with the adjusted levels of the National State of Disaster.</p> <p>1.3. The COVID-19 Regulations were published when the country was placed on COVID-19 hard lockdown, and subsisted when the Alert level system was introduced.</p> <p>1.4. Considering that the country is currently on Alert level 1, wherein several economic activities have been allowed to resume and operate, the Authority resolved to review the COVID-19 Regulations.</p> <p>1.5. On 23 April 2021, the Authority published a Notice inviting representations from interested parties on the review of the COVID-19 Regulations.</p> <p>1.6. The Authority received fifteen (15) written representations for consideration. Two (2) written representations were submitted after the deadline, and, therefore, were not considered.</p> <p>1.7. The late representations were from:</p> <p>1.7.1 The ICASA Consumer Advisory Panel at 16:04; and</p>	
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	<p>1.7.2 The Free Market Foundation at 16h16.</p> <p>1.8. The Authority received two (2) requests for confidentiality in terms of section 4D (4) of the ICASA Act, from Telkom and Vodacom.</p> <p>1.9. The requests were granted, as they met the criteria set in section 4D (4) of the ICASA Act.</p> <p>1.10. The following representations were made under different themes, and ICASA's response to those representations is outlined.</p> <p>1.11. Complaints Resolution :</p> <p>1.11.1 That Licensees be exempt from resolving complaints within the prescribed time frames.</p> <p>1.11.2 The Authority was of the view that, considering the eased lockdown regulations, licensees should be required to resolve complaints received by them within 20 working days.</p> <p>1.12. Tariffs Notifications:</p> <p>1.12.1 That Tariffs be lodged with the Authority one day prior to the launch of the product.</p> <p>1.12.2 The Authority was of the view that the period of one day be extended on condition that it will apply only to tariff notifications which are aimed at supporting consumers during the COVID-19</p>	
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	<p>pandemic. Any other tariff notifications i.e. price increases, name changes etc. should still comply with the 7-day notification requirement.</p> <p>1.13. South African Sound and Television Broadcasting Services Performance Period</p> <p>1.13.1 That the performance period during the National State of Disaster begin from 7h00 to 21h00.</p> <p>1.13.2 The Authority is of the view that there was a need to revert to the original performance period (i.e. 5h00-23h00) in light of the written representations. This will enable television licensees to broadcast programmes falling within the prime slot.</p> <p>1.14. Local Content Obligations:</p> <p>1.14.1 That television broadcasters be 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</p>	
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	<p>comply with the local content music quotas.</p> <p>1.14.2 The Authority was of the view that the television local content quotas should be revised while the sound broadcasting programming requirements exemption should be lifted, considering the eased lockdown and the written representations.</p> <p>1.15. Quarterly Submission of Programming Logs and Recordings to the Authority:</p> <p>1.15.1 That during the National State of Disaster, the requirement for licensees to submit recordings continue be suspended.</p> <p>1.15.2 The Authority was of the view that the suspension of the requirement for licenses to submit recordings should be lifted, as these can be submitted electronically.</p> <p>1.16. Requirement to Convene Community Meetings including any Annual General Meetings (AGMs):</p> <p>1.16.1 That Community Broadcasting Service licensees be exempt from holding community meetings or AGMs until the National State of Disaster is terminated.</p> <p>1.16.2 The Authority's view is that, in light of the eased lockdown restrictions,</p>	
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	<p>community broadcasting service licensees should conduct community meetings or AGMs virtually or physically, subject to, inter alia, adherence with COVID-19 health protocols, directions and regulations as prescribed in terms of the Disaster Management Act, No 57 of 2002. Where it is not possible for a community broadcasting service licensee to conduct community meetings or AGMs, proof thereof must be submitted to the Authority to this end.</p> <p>1.17. Submission of Applications:</p> <p>1.17.1 That Subscription Broadcasting Licensees may submit their channel authorisation application four days prior to the launch.</p> <p>1.17.2 The Authority submits that the above provision should also be extended to Free-To-Air Broadcasting Licensees, considering the written representations. However, the number of days to process the applications should be extended from 4 to 7 days to cater for influx of applications in the event of the third wave.</p> <p>1.18. Deployment of Electronic Communications Facilities</p> <p>1.18.1 That Licensees are required to notify ICASA regarding</p>	
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	<p>new installations of electronic communications facilities on their networks within seven days.</p> <p>1.18.2 The Authority should consider revising the reporting period from 7 days to 20 working days to accommodate licensees with larger networks.</p> <p>1.19. Type Approval</p> <p>1.19.1 That the temporary Type Approvals be valid for a period of three (3) months after termination of the National State of Disaster.</p> <p>1.19.2 Considering the written representations, the Authority is of the view that the decommissioning of the equipment operating utilising the temporary COVID-19 spectrum, shall take place within three (3) months after the expiry of the temporary radio frequency spectrum licences to allow time for the decommissioning.</p> <p>1.20. Temporary assignment of Radio Frequency Spectrum:</p> <p>1.20.1 On 31 March 2021, the Authority extended the expiry date of temporary radio frequency spectrum licences, from 31 March 2021 to 31 May 2021.</p>	
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	<p>1.20.2 The Authority stated in the Notice to review the COVID-19 Regulations, that it does not intend to further extend the expiry date of the temporary radio frequency spectrum licences beyond 31 May 2021, due to other issues raised in the pending litigation between ICASA vs Telkom and others, under the Pretoria High Court case number: 66778/2020.</p> <p>1.20.3 The Authority requested a legal opinion from Senior Counsel on the options available to the Authority for the extension of the temporary spectrum licences beyond 31 May 2021 considering the written representations.</p> <p>1.20.4 The legal opinion indicated that the temporary spectrum licences for IMT700 and IMT800 should not be extended beyond 31 May 2021, since the High Court found, amongst others, that the use of these bands by mobile operators, whilst e.tv is still “the incumbent occupant”, would “result in the degradation and interference with its broadcast signal and dilute its commercial exclusivity and competitive strength.”</p> <p>1.20.5 The opinion further indicated that there was no reason why ICASA could not extend the temporary licences for the</p>	
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	<p>IMT2300, IMT2600, IMT3500 spectrum bands, as the High Court did not make any findings against the use of these spectrum bands, since there is no dispute about their availability. In addition, the High Court did not find that the use of these bands has any negative consequences for broadcasters such as e.tv.</p>	
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**ISSUED BY: Secretariat Office**  
**on behalf of Council**