



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

COUNCIL DECISIONS– 26 AUGUST 2021

ITEM NO.	AGENDA ITEM	COUNCIL DECISION
1.	<p>2020/21 ICASA Annual Report</p> <p>The purpose of the submission was to request Council to approve the Authority's Annual Report for the 2020/21 financial year.</p> <p>1.1. Section 55 of the Public Finance Management Act No. 1 of 1999 enjoins ICASA, as a public entity, to prepare an annual report on the activities of the organisation during that financial year.</p> <p>1.2. The process of preparing the 2020/21 Annual Report has been completed, and it is ready for submission to the Minister of Communications and Digital Technologies, Office of the Auditor General, National Treasury and Parliament on 31 August 2021.</p> <p>1.3. The Annual Report is divided into six (6) sections, namely;</p> <p>1.3.1 General Information;</p> <p>1.3.2 Performance Information;</p> <p>1.3.3 Governance;</p> <p>1.3.4 Human Resource Management;</p> <p>1.3.5 Complaints and Compliance Committee; and</p> <p>1.3.6 Financial Information.</p>	<p>The recommendation was approved.</p>



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ITEM NO.	AGENDA ITEM	COUNCIL DECISION
	<p>Recommendation</p> <p>It was recommended that Council approve the Authority's Annual Report for the 2020/21 financial year.</p>	
2.	<p>Sixth Amendment to the ICT COVID-19 National Disaster Regulations</p> <p>The purpose of this 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>2.1. On 6 April 2020, the Authority published the COVID-19 Regulations. 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 –</p> <p>2.1.1 Facilitate the dissemination of information required for dealing with the National Disaster;</p> <p>2.1.2 Enable the facilitation of the national response to the National State of Disaster, post-disaster recovery and rehabilitation;</p> <p>2.1.3 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</p> <p>2.1.4 Ensure that there is a continuation of the provision of services in the Republic.</p>	<p>The recommendation was approved by Council.</p>



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	<p>2.2 On 23 April 2021, the Authority published the notice inviting representations from interested parties, on the review of the COVID-19 Regulations.</p> <p>2.3 Written representations received by the Authority during the review of the Regulations supported the need for the extension of the validity period of the temporary spectrum, inter alia, until 3 months after the end of the National State of Disaster, or alternatively until the process of assigning new high demand spectrum is completed, whichever is later.</p> <p>2.4 Having considered that the representations received, the Authority resolved to extend the duration of the temporary radio frequency spectrum by a period of three (3) months (i.e. 1 June to 31 August 2021), or three (3) months after the termination of the National State of Disaster, whichever happens first, based on the current obligations.</p> <p>2.5 Upon conclusion of the public consultation process, the Authority published the Fifth Amendment to the COVID-19 Regulations on 28 May 2021.</p> <p>2.6 The temporary spectrum was assigned by the Authority in order to enable licensees to deal with the anticipated rise in demand for network capacity or data services.</p> <p>2.7 It should be noted that IMT spectrum bands were assigned on a temporary basis. The validity of the temporary spectrum will come to an end on 31 August 2021.</p> <p>2.8 Licensees should be required to pay prorated spectrum fees during the three (3) months extension for the use of the temporary spectrum.</p>	



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	<p>2.9 The licensees should not be required to extend, the number of months that they will be required to maintain the virtual classrooms platforms for an additional three-month period.</p> <p>2.10 Vodacom's request for an extension of the temporary spectrum licences;</p> <p> 2.10.1 On 19 August 2021, the Authority received a request from Vodacom for its temporary spectrum licences to be extended until 3 months after the end of the national state of disaster, or alternatively 3 months after the permanent licensing of the spectrum, whichever is later.</p> <p> 2.10.2 Vodacom submitted that the Authority is bound by the Minister's Policy Direction dated 26 March 2020, to make the unassigned temporary spectrum available during the subsistence of the COVID-19 national disaster unless it is impossible for ICASA to do so.</p> <p> 2.10.3 There is no basis for Vodacom's contention that the Authority is mandated and bound by the Minister's Policy Direction. The Authority is only subject to the Constitution and the law. It is not bound by the directives, and it may deviate from them and act independently as it is in law obliged to do.</p> <p>2.11 Telkom's request for an extension of the temporary spectrum licences;</p>	



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	<p style="margin-left: 40px;">2.11.1 On 20 August 2021, the Authority also received a request from Telkom for its temporary spectrum licences to be extended until the lifting of the national state of disaster, or the permanent licensing of the unassigned high demand spectrum, whichever is first.</p> <p style="margin-left: 40px;">2.11.2 Telkom submitted that it is extensively utilising the temporary spectrum to provide essential services. It also submitted that the temporary spectrum is critical in meeting the capacity requirements of consumers, businesses, government, students and learners occasioned by the COVID-19 pandemic.</p> <p>2.12 MTN's request for an extension of the temporary spectrum licences;</p> <p style="margin-left: 40px;">2.12.1 On 23 August 2021, the Authority also received a request from MTN, inquiring whether the Authority would grant an extension to the temporary spectrum as well as spectrum pooling.</p> <p style="margin-left: 40px;">2.12.2 It was MTN's submission that it would be irrational for ICASA not to extend the temporary spectrum licences, and spectrum sharing agreements beyond 31 August 2021.</p> <p style="margin-left: 40px;">2.12.3 MTN further submitted that the expiry of the temporary licence during the subsistence of the COVID-19 pandemic would, inter alia:</p>	



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	<div style="margin-left: 40px;"> <p>2.12.3.1 Come at a significant cost to both MTN and the consumers;</p> <p>2.12.3.2 Be contrary to the public interest objectives of the ECA;</p> <p>2.12.3.3 Be contrary to the Minister's Direction – that directed ICASA to licence available spectrum on a temporary basis for the duration of the COVID-19 national disaster.</p> </div> <p>2.13 Minister's view on the extension of the temporary spectrum licences;</p> <div style="margin-left: 40px;"> <p>2.13.1 The Minister in her letter dated 25 May 2021, expressed a view that the use of radio frequency spectrum assigned on a temporary basis, should be valid for the duration of the COVID-19 disaster period or the conclusion of the ITA on the Spectrum Auction, whichever occurs first.</p> <p>2.13.2 However, the Authority in its letter dated 27 May 2021 advanced its reasons for having deviated from the Minister's Policy Direction and from the Minister's subsequent proposal.</p> </div> <p>2.14 The Authority has been extending the duration of the temporary spectrum since 2020. It is important for the licensees to wind up their operations on the temporary spectrum, and to notify consumers about their services and products – pursuant to the expiry of the temporary spectrum licences.</p>	



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	<p>2.15 The extension of the validity of the regulations, will be for a period starting from 31 August 2021 to 30 November 2021.</p> <p>2.16 The three (3)-month period will also provide ICASA an opportunity to finalise a process for a permanent assignment of IMT spectrum bands. However, the Authority should not extend any further, the utilisation of the temporary radio frequency spectrum beyond 30 November 2021.</p> <p>2.17 The licensees with spectrum sharing agreements approved by the Authority in terms of COVID-19 Regulations, must also wind up their operations with respect to their spectrum sharing agreements, on or before 30 November 2021.</p> <p>2.18 The Authority should not approve any spectrum sharing agreements, or further extension of the spectrum sharing agreements in terms of the COVID-19 Regulations beyond 30 November 2021.</p> <p>Recommendation</p> <p>It was recommended that Council approves –</p> <p>2.19 The sixth amendments to the COVID-19 Regulations; and</p> <p>2.20 The letter to the Minister of Communications and Digital Technologies.</p>	



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ISSUED BY: Secretariat Office
on behalf of Council