



**MTN Submission**

**Notice Inviting Written Representations**

**Review of the ICT COVID-19 National Disaster Regulations Published on 22 April  
2021.**

**7 May 2021**

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Moses Mashisane

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## 1. Introduction, Context and Background

- 1.1. On 22 April 2021, the Independent Communications Authority of South Africa (the Authority) published Notice inviting written representations on the Review of the ICT COVID-19 Regulations. MTN welcomes the notice and hereby provides its comments on the notice. MTN's comments seek to provide the Authority with broader context of the impact which, if the Authority insist not to extend the temporary spectrum or spectrum pooling arrangements, will ensue on MTN's network and the severe consequences for our customers, the citizens and economy.
- 1.2. On 2 October 2020, ICASA published the Invitation to Apply (ITA) for the auction of high demand radio spectrum. The auction will include spectrum in the 700-800 MHz band, 2.6 GHz band and 3.5 GHz band. The 2.3 GHz will be auctioned at a later stage. MTN welcomes the planned spectrum auction, which will be critical in further broadening access in South Africa in a sustainable manner. However, the planned auction has been put on hold due to pending litigation. MTN remains hopeful that the pending litigation is resolved soon for the auction to proceed. For its part MTN continues to work towards entering settlement negotiations with ICASA to find a mutually acceptable solution on the narrow concerns raised by MTN regarding the ITA. MTN's concerns relate to the inclusion of the vital 3500MHz, the so called "5G anchor band" in the opt-in round and the exclusion of MTN from participating in the opt-in round due to the Authority arbitrarily classifying MTN as a Tier 1 operator. MTN remain hopeful that ICASA and all parties will engage to secure a speedy resolution, to enable the spectrum auction to take place soon.
- 1.3. The temporary spectrum allocated at the start of lockdown, which was due to expire in November 2020, has been extended multiple times with last extension being 31 May 2021. This has continued to significantly ease the congestion in hotspots across the country where data traffic has surged. It is critical that the temporary spectrum be extended until the auction has taken place to avoid the adverse impact associated with not extending the temporary spectrum.
- 1.4. All stakeholders, MTN, consumers, ICASA, government and citizens, will derive enormous benefits for the extension of the temporary spectrum. MTN and other licensees who have been allocated the temporary spectrum have been paying for the use of this spectrum from November 2020. ICASA has collected over Twenty Million Rand from December 2020 to date in spectrum fees from MTN. The combine industry temporary spectrum fees could be estimated at One Hundred Million in the past 5 months (November 2020 to May 2021). We believe that if this trend continues, ICASA may collect up to Two Hundred Million Rand from all temporary spectrum licences holders by the end of 2021. This revenue



is desperately needed by the fiscus in addition to other economic benefits, which will be explained later in this submission. It is common cause that continuing with spectrum extension on the basis of fiscus benefit alone should be a preferred option than letting spectrum lie idle until the auction process has been finalized.

- 1.5. The temporary spectrum has brought many benefits to citizens of South Africa during this difficult time. It has allowed MTN to zero-rate over 1000 health, education, and job websites, helping more than 5 million financially vulnerable South Africans each month as they navigate the COVID-19 pandemic. In addition, the temporary spectrum has allowed MTN to further enhance its coverage and quality in congested urban areas, as well as peri-urban and rural sites while also helping to drive the more than 30% reduction in customer pricing. These are vital benefits to South Africans and the importance of the spectrum auction, in terms of its positive impact on the lives of ordinary South Africans, should not be underestimated.

## 2. High Court interim order - Baqwa J in Telkom SA SOC Ltd v ICASA

- 2.1. Paragraph 8.7 of the notice issued by the Authority states that the Authority does not intend to further extend the expiry date of the temporary licences beyond 31 May 2021 “due 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”. This statement refers to the judgment and order of Baqwa J in Telkom SA SOC Ltd v ICASA handed down on 8 March 2021 (“the Telkom judgment”). The notice goes on to invite written representations addressing whether the Authority should consider extending the duration of the temporary licences beyond 31 May 2021 “despite the issues raised in the pending litigation and the interdict which has been granted against it”.<sup>1</sup>
- 2.2. It is apparent from paragraph 8.7 of the notice, read with the Authority’s founding affidavit in its application to suspend the Telkom judgment (“ICASA’s affidavit”),<sup>2</sup> that ICASA is concerned that this judgment might mean that it ought not to extend the temporary licences, at least in relation to the IMT700 and IMT800 spectrum.
- 2.3. MTN submits, for the following reasons, that the Telkom judgment does not require ICASA to refuse to extend the temporary licences:
  - (a) The order in that case, which was granted on an urgent basis, interdicts the Authority from assessing or adjudicating applications received

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<sup>1</sup> ICASA Notice, para 8.9(a).

<sup>2</sup> Founding affidavit in *ICASA v Telkom SOC Ltd* dated 26 March 2021 and filed under case no. 2020/66778.



pursuant to the invitation to apply for the licensing and auctioning of spectrum issued on 2 October 2020 ("the ITA").<sup>3</sup> This order has **no bearing** on the temporary licences and certainly does not prevent the Authority from extending the temporary licences.

- (b) The judgment provides four reasons for finding the existence of a prima facie right (i.e. for finding that a court may in due course find that the Authority's approach in relation to the spectrum auction was unlawful): (i) the change in approach of no longer awaiting the outcome of digital migration prior to allocating, and allowing the use of spectrum in the IMT700 and IMT800 bands was procedurally unfair; (ii) it was unreasonable to publish the ITA without first assessing the impact of the spectrum auction on competition; (iii) bidders would spend significant amounts but would not be able to get any commercial value from the allocation of the spectrum prior to digital migration, which was irrational; and (iv) sections 30 and 31 of the Electronic Communications Act, 2005 ("the ECA") empower the Authority to issue licences for spectrum that is available.

2.4. Even assuming that there is merit in these findings, none of these reasons apply in the current instance.

2.4.1. **First:** there can be no question of procedural unfairness in relation to the potential extension of the temporary licences, particularly in circumstances in which the Authority has invited representations from interested parties on the extension.

2.4.2. **Second:** the ITA envisages the long-term allocation of frequency spectrum to the successful bidders, which is a far cry from a situation in which the Authority has temporarily licensed the use of portions of spectrum in order to assist in combatting the effects of the COVID-19 pandemic. In the face of the current national disaster, and the resultant need to facilitate increased access to radio frequency spectrum, it is plainly reasonable to grant temporary licences without first undertaking a competition assessment.

2.4.3. **Third:** as the Authority is aware, MTN and its customers have benefitted from the use of the temporarily allocated spectrum (including the IMT700 and IMT800 bands) in the period since April 2020. These benefits are set out in MTN's submission below. This additional spectrum assisted MTN in meeting the exponentially increased demand for data arising in the pandemic and, in doing so, has facilitated working, and learning from

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<sup>3</sup> *Telkom* judgment, para 71.1.



home as well as online access to goods and services. The Authority's licensing of the use of this temporary spectrum is plainly rational.

2.4.4. **Fourth:** sections 30 and 31 of the ECA do not limit the licensing of spectrum to that which is "available". On the contrary, section 30(2)(b) provides that, in controlling, licensing and assigning the use of the radio frequency spectrum, ICASA must *"take into account modes of transmission and efficient utilisation of the radio frequency spectrum, including allowing shared use of radio frequency spectrum when interference can be eliminated or reduced to acceptable levels as determined by [ICASA]"*. But, in any event, the spectrum that has temporarily been licensed to MTN and other mobile network operators is available. As ICASA's affidavit states: *"[t]he temporary IMT700 and IMT800 spectrum which has been made available for use by Telkom, MTN and Vodacom remains available"*.<sup>4</sup>

2.5. Moreover, MTN submits that the Authority should bear the following legal issues in mind in deciding whether or not to extend the temporary licences:

2.5.1. As the Authority has confirmed, the use of the temporarily-allocated IMT700 and IMT800 spectrum by the mobile network operators has not caused any harmful interference in the period since April 2020.<sup>5</sup> In addition, the spectrum that has been temporarily allocated in the IMT2600 and IMT3500 has not been licensed to any other entity. There is thus no good reason not to extend the temporary licences, and it would be irrational not to do so. Put differently, it would be irrational for the Authority to deviate from its original intention to assign the relevant spectrum until three months after the expiry of the national state of disaster<sup>6</sup> (or until the near-completion of the spectrum auction process).<sup>7</sup>

2.5.2. In any event, the consequences of not extending the temporary licences clearly outweighs any possible benefit that might be said to result from the expiry of these licences. As explained in this submission, the expiry of the temporary licences during the course of the COVID-19 pandemic would have a significant impact on quality of service and consumer benefits. It would not only increase the cost of data at a time that the

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<sup>4</sup> ICASA's affidavit, para 3.16. See also para 3.25.1.

<sup>5</sup> ICASA's affidavit, paras 3.15, 3.17 and 3.25.2.

<sup>6</sup> Regulation 6(6) of the Regulations.

<sup>7</sup> Regulation 6(7) of the Regulations initially stated that the temporary licenses would be valid until 30 November 2020, which deadline was extended to 31 March 2021 and then to 31 May 2021. The Notice confirms that the date of 30 November 2020 *"was based on the anticipation that [ICASA's] pending process to license available RFS in the IMT bands would be finalised by the end of December 2020"* (para 8.3).



country can least afford it, it would severely hamper quality of service and network providers' efforts to meet the exponential demand for data. As the Authority's affidavit states, "*the prejudice and irreparable harm to the general public*" of not extending the temporary licences in respect of the IMT700 and IMT800 spectrum "*cannot be understated*".<sup>8</sup> the Authority's affidavit goes on to explain that:

*"The COVID-19 pandemic has forced the general public to rely on 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 electronic communication services. The more people work from home, receive lectures from home, bank from home, buy things from home using electronic communication 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. Accordingly, any further delay in releasing high demand spectrum is only going to irreparably prejudice the general public in circumstances where there is not going to be any irreparable harm to Telkom and e.tv."*<sup>9</sup>

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<sup>8</sup> ICASA's affidavit, para 3.26.

<sup>9</sup> ICASA's affidavit, paras 3.27.3 to 3.27.5. ICASA's affidavit also agrees with MTN's statement that: "[MTN's] network and our customers will be negatively impacted [by the expiry of MTN's temporary license]. The consequential degradation in quality of service will



- 2.5.3. The non-extension of the temporary licences would similarly cause irreparable prejudice to the general public without a concomitant benefit to Telkom and e.tv. That being the case, MTN submits that the non-extension of the temporary licences would be unreasonable.
- 2.5.4. The non-extension of the temporary licences would also compromise the ability of operators to continue to meet their obligations – under the Directions<sup>10</sup> and the Regulations<sup>11</sup> – to stream public announcements, to provide zero-rated access to educational and COVID-19 websites, and to provide connectivity to district virtual classrooms to support virtual teaching during the national disaster at a minimum speed of 10mbps. It would also compromise operators' ability to continue to provide a host of other beneficial services during the course of the pandemic, including enabling connectivity by small and medium businesses, university students and consumers in underserved areas as well as providing services at reduced rates. This would undermine the public interest and is yet a further basis for unreasonableness.
- 2.5.5. A decision not to extend the temporary licence would be contrary to paragraph 6.10 of the Directions, which stipulates that the Authority must, to the extent possible, "*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*" (emphasis added).
- 2.5.6. The primary object of the ECA is to provide for the regulation of electronic communications in the public interest<sup>12</sup> – an object that is echoed in section 2(b) of the Independent Communications Authority of South Africa Act, 2000 ("ICASA Act"). The public interest would undoubtedly be better served by the extension of the temporary licences, as would several other objects of the ECA, including promoting the universal provision of electronic communications networks and services and connectivity for all,<sup>13</sup> ensuring efficient use of the radio frequency spectrum,<sup>14</sup> promoting the interests of consumers with regards to price,

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*result in customers not being able to continue with distance/remote learning or work from home. This will impact businesses at a time when our economy is already under pressure as a result of the pandemic" (para 3.20).*

<sup>10</sup>Electronic Communications, Postal and Broadcasting Directions issued under Regulation 10(8) of the Disaster Management Act, 2002, published under Government Notice 417 of 26 March 2020, as amended ("**the Directions**"), paras 5.1.2, 9 and 10.

<sup>11</sup> Regulations 6(13) to (16).

<sup>12</sup> Section 2 of the ECA.

<sup>13</sup> Section 2(c) of the ECA.

<sup>14</sup> Section 2(e) of the ECA.





quality and variety of communication services,<sup>15</sup> and ensuring network reliability.<sup>16</sup>

### 3. Global approach to temporary spectrum allocated during COVID-19

3.1. As per the International Telecommunications Union (“ITU”) the release of temporary spectrum was seen on a global scale to assist operators to meet the increased demand for capacity<sup>17</sup>. The ITU identified that policymakers and regulators responded to the COVID-19 pandemic by making permanent or temporary IMT spectrum licenses available which may facilitate network access and improved quality of service<sup>18</sup>. Countries such as Australia, Cape Verde, Ireland, Panama, and many others made temporary or additional spectrum available to support demand during the pandemic<sup>19</sup>.

3.2. The ITU states that the pandemic has demonstrated the importance of the digital economy emerging markets during a pandemic and has correctly pointed out that the digital divide has become more pronounced in developing markets.<sup>20</sup> The panel of experts recognised that Governments play a critical role and (together with operators) must concentrate on *“...immediate sector needs including the release of emergency spectrum, deferring licence fee payments, or issuing technology-neutral licences.”*<sup>21</sup>

3.3. The GSMA also states that additional spectrum *“...can contribute to the optimisation of mobile network infrastructure in order to better serve the needs of communities and public services.”*<sup>22</sup> The GSMA proposes the following mechanisms:

- *“Providing short-term/emergency spectrum licences to MNOs to access any portions of unallocated spectrum, renewable depending on national requirements*
- *Expediting the issue of short-term/trial licences to MNOs where new technologies may enable operators to assist on delivering*

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<sup>15</sup> Section 2(n) of the ECA.

<sup>16</sup> Section 2(q) of the ECA

<sup>17</sup> ITU *“First Overview of Key Initiatives in Response to Covid-19”* May 2020

<sup>18</sup> *Supra* at page 4

<sup>19</sup> *supra*

<sup>20</sup> ITU *“Economic Impact of Covid-19 on Digital Infrastructure”* Report of an Economic Experts Round table organized by ITU; GSR-20 Discussion Paper July 2020.

<sup>21</sup> *Supra* at page 32

<sup>22</sup> GSMA Europe *“How temporary access to spectrum can ease congestion during the COVID-19 crisis”* Wednesday 1 April 2020. GSMA | How temporary access to spectrum can ease congestion during the COVID-19 crisis - GSMA Europe



*or augmenting connectivity and deploying services on an ad-hoc basis*

- *Facilitating and expediting access to backhaul spectrum*
- *Extending deadlines for any ongoing transitions or renewals for licensees providing high-speed broadband and other critical services*
- *Removing red tape and restrictions on ways to immediately access more spectrum, including spectrum sharing”<sup>23</sup>*

3.4. The GSMA cites South Africa as one of the countries who have implemented the above mechanisms. Global industry associations and experts agree that measures such as the release of temporary spectrum are essential to support the digital economy during the pandemic. The Authority took the right step to allocate temporary spectrum and should continue to do so until the IMT auction is finalised. This approach is in line with current global practises.

3.5. Another example of where temporary spectrum has provided relief to assist operators to cope with increased data traffic is in Ireland<sup>24</sup>. According to a report compiled on 15 March 2021 the Irish Regulator, ComReg noted that “...the weekly aggregate voice and data traffic volume averaged across all mobile networks is circa 7% and 67% greater than the base pre-COVID-19 level, respectively.” Comreg extended the temporary spectrum to October 2021. One of the reasons advanced by ComReg was that: “the Proposed Approach is in the best interests of consumers, unlikely to distort competition, whilst being appropriate in the context of ComReg’s functions, objectives and duties (including being objectively justified and proportionate).”

#### **4. Temporary spectrum Benefits**

4.1. After the President declared a State of National Disaster in March 2020, scores of people were confined to their homes. Internet connectivity became the primary enabler for citizens to carry on with their studies, work, and e-commerce. Average daily data traffic on MTN’s network increased by more than 50% when the initial hard lockdown was implemented in 2020. Even though

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<sup>23</sup> *Supra*

<sup>24</sup> COVID-19: Further temporary spectrum management measures Response to Consultation and Decision on a second further temporary licensing framework for spectrum rights in the 700 MHz, 2.1 GHz and 2.6 GHz Bands Response to Consultation, Decision and final Draft Regulations Reference: ComReg 21/24 Decision D03/21 Date: 22/03/2020



South Africa is now at level 1 risk adjustment as per the National Disaster Regulations the increase in traffic has not subsided.

- 4.2. Looking at current traffic levels, average daily traffic has grown by up to 114% since the pandemic started to date. Traffic during the busy hour between 6 to 9pm is more prevalent as video consumption has increased. Figure 1 below demonstrates how data traffic increased over time, particularly 4G data traffic, furthermore, there is a significant peak in hourly traffic during the busy hours.

### Data volume (AVG PB/day)

### Total Data Traffic by hour (TB)

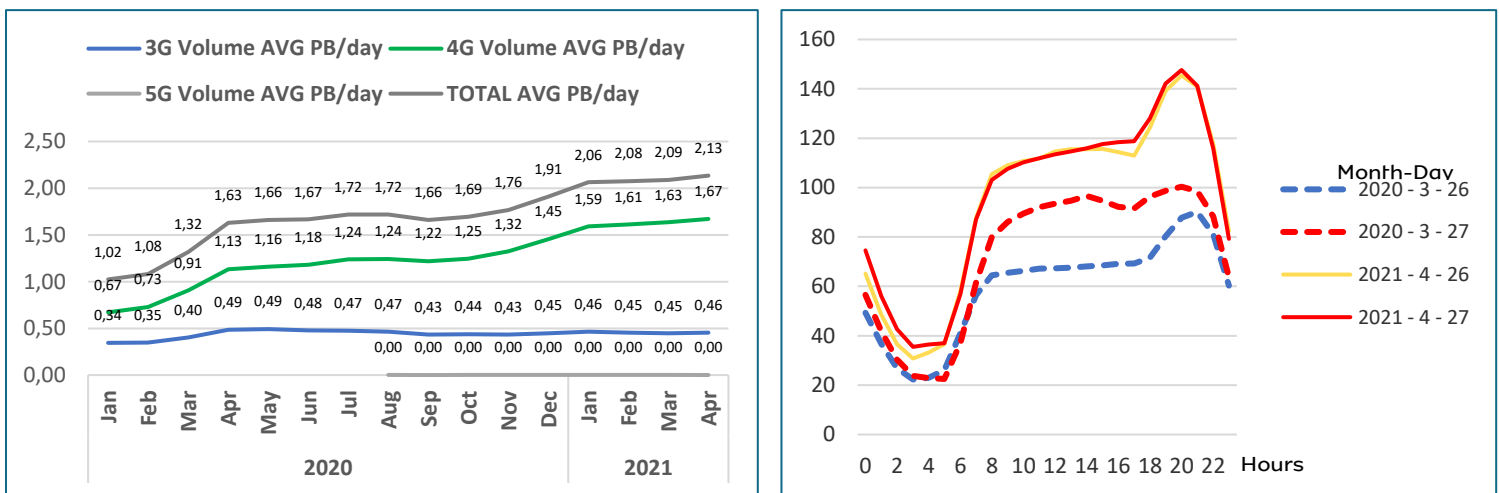


Figure 1

Source: MTN

- 4.3. The unprecedented growth in data traffic impacted the quality of service on MTN's network with data throughput on 4G degrading to approximately 8Mbps. Figure 2 below demonstrates how throughput improved to 12Mbps once the temporary spectrum was implemented and then began to decline again to 10Mbps in early 2021. This is testament to the fact that data traffic is still growing and that there is a clear need for temporary spectrum to keep the network stable and to meet the Authority's requirements to provide connectivity at speeds of no less than 10Mbps.<sup>25</sup>

<sup>25</sup> Regulation 4.3 and 4.6.3 of MTN's Temporary Radio Frequency Spectrum License No.: IMT/TEMP/RF002/APR/20

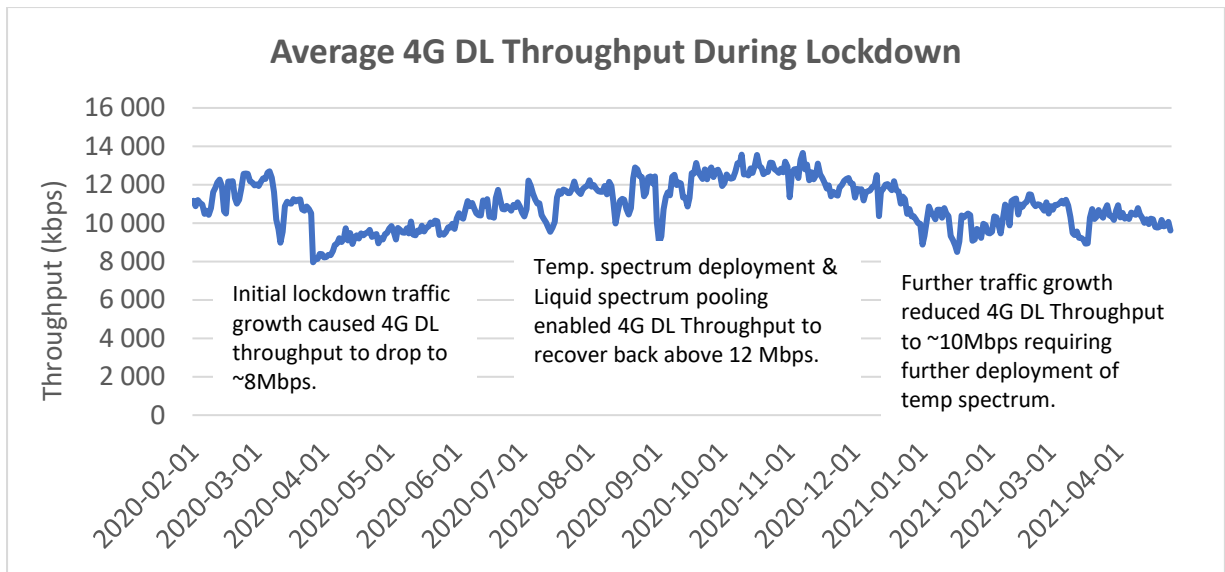


Figure 2

Source: MTN

4.4. Once the temporary spectrum was allocated, MTN rolled out the on the additional spectrum bands as set out in figures 3 and 4 below which provided much needed relief. Rollout in the 700MHz and 800MHz has been limited due to interference as a result of delay in migration from analogue to digital terrestrial TV in South Africa.

4G	Actuals as at April 2021 (# of sites)	Additional May-Dec 2021 Scope (# of sites)
2600 MHz	860	706
800 MHz	5*	0*

Figure 3

Source: MTN

5G	Actuals as at April 2021 (# of sites)	Additional May-Dec 2021 Scope (# of sites)
3500 MHz	115	450
700 MHz	5*	0*

Figure 4

Source: MTN

- 4.5. If the temporary spectrum is not extended, as stated in paragraph 8.7 of the Authority's notice, there will be negative consequences on the MTN's network. With respect to MTN's 4G services the loss of 40 MHz in 2600MHz will result in 474 sectors across the network becoming congested with an average loss of 26% of headroom on each sector. In addition, the loss of 5G Spectrum - 50MHz in 3500 Band will mean that MTN must shut down its 5G service entirely. Shutting down 5G services will prevent 5G innovation efforts impacting Government's 4IR goals such as MEC (mobile-edge computing) and uRLLC (ultra-reliable low latency communication). South Africa will remain technologically behind in the era where most developing nations are leapfrogging based on technology to provide superior benefits to the citizens.
- 4.6. Based on our modelling, the average daily 4G throughput is expected to degrade from 11.6Mbps (June 21) to 4Mbps by December 2021. The ability to zero rate over 1000 URL's will be compromised, see further detail in the relevant section below. Not only will the withdrawal of temporary spectrum impact customers, it will mean that MTN is unable to comply with its temporary spectrum obligations and quality of service requirements set out in the End-User and Subscriber Service Charter Regulations, 2016.<sup>26</sup> It is important to note that ongoing load shedding will add additional strain on the MTN network.

## 5. Spectrum pooling

- 5.1. With reference to the Authority's letter<sup>27</sup> regarding the Application for the Extension of Spectrum Pooling in Terms of the Electronic Communications Act, 2005 read Together With Section 6 of The ICT Covid-19 National Disaster Regulations dated 28 April 2021, MTN would like this submission to also serve as a motivation to extend the spectrum pooling arrangement with Liquid Telecoms and the approval of any pending spectrum pooling application between MTN and relevant licensees. The exponential increase in data traffic and the need for additional spectrum has been documented and demonstrated in section 4 above.
- 5.2. Spectrum Pooling can and has assisted operators to cope with the lack of spectrum and increased capacity on the network. It is well documented that the Authority has not assigned any new high demand spectrum in over a decade despite repeated failed attempts to auction the spectrum. This has resulted in South Africa's average spectrum holdings per operator to be half of that of other European countries, and as little as a third compared to more progressive

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<sup>26</sup> General Notice 189 in Government Gazette 39898 dated 1 April 2016, as Amended.

<sup>27</sup> Ref no: 4/1/1/1/MTN-Liquid /Extension/2021



countries. Figure 5 below illustrates that South Africa's spectrum allocation is well below par when compared to European countries.

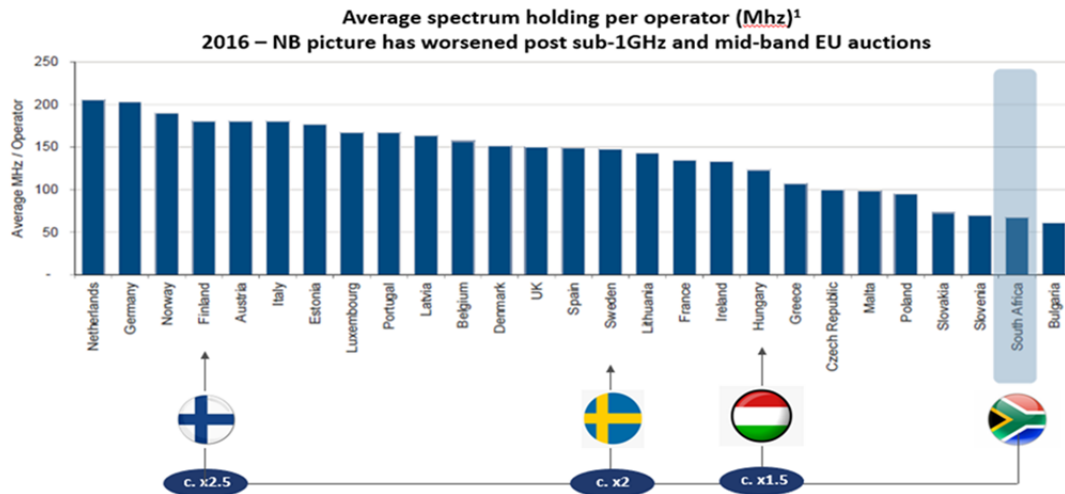


Figure 5

Source: dataportal.com

5.3. Figure 5 depicts only half the story. MTN is the second largest network in terms of subscribers serviced but has less than the average spectrum assignment, illustrated in figure 6 below, especially when compared to Telkom. MTN's spectrum is only half of the total assignment in South Africa. Rain's allocation of 80MHz in the 3700MHz band 43 is included in the calculation below since Rain articulates in paragraph 40 of their answering affidavit<sup>28</sup> that they are utilizing this spectrum to deploy 5G even though it is currently not considered an IMT band in South Africa and won't be until the conclusion of WRC-23.

<sup>28</sup> Mobile Telephone Networks (Pty) Ltd and ICASA and others case no 3619 / 2021

Band / MHz	MTN	Vodacom	Cell C	Telkom	Rain	Liquid
Total existing	76	81	76	162	134	90
850						2x5
900	2x11	2x11	2x11			
1800	2x12	2x12	2x12	2x12	2x12	2x12
1800 TDD					10	
1900 TDD				20		
2100	2x15	2x15	2x15	2x15		
2100 TDD		5				
2300 TDD				60		
2600 TDD					20	
3500 TDD				28		56
3700 TDD					80	

Figure 6

Source: MTN

5.4. Figure 7 below depicts the percentage of web traffic served to web browsers on mobile phones. The countries considered have significantly more spectrum than South Africa. South Africa is second only to Nigeria with 79.4% of web traffic being delivered via mobile.

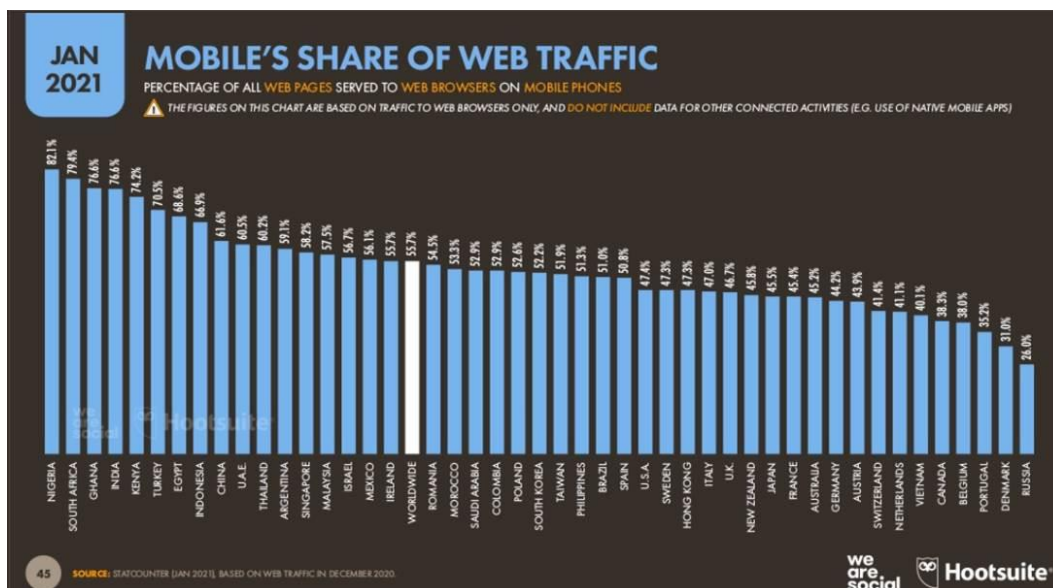


Figure 7

Source: Coleago

5.5. In essence, MTN services millions of subscribers with a superior quality of service with a fraction of the spectrum assigned to it when compared to its international counterparts of similar size.

5.6. To meet network coverage and quality of service expectations operators have only three mechanisms available to them. Firstly, through acquisition of other entities to access additional spectrum resources. Consolidation within a capital-intensive sector such as the mobile market is not uncommon but requires regulatory and competition approval which historically has not been forthcoming in South Africa. Secondly, an operator can build their way out of congestion through the densification of the network. This is by far the costliest mechanism and will not result in a reduction of the cost to communicate. Finally, the most utilized mechanism world over is the assignment by national regulatory authorities of additional spectrum resources. In the absence of additional spectrum, operators have been forced to enter into spectrum pooling agreements that can provide benefits to both parties in achieving their goals. The benefits of spectrum pooling are:

- Increased efficiency with a common LTE-1800 channel effectively allowing for instantaneous load balancing across the single carrier in the band.
- Improved customer experience on LTE devices as LTE devices on both networks will be able to leverage the benefit of the increased channel size in both downlink and uplink, whereas only a small subset of LTE devices can support aggregating of the separate LTE-1800 channels.
- Reduced operational complexity for both Parties in maintaining load balancing functionality which requires regular parameter adjustments due to changing user traffic patterns on each network.
- By configuring a single channel in the band, more spectrum can be activated on more sites where needed, in a shorter time frame as this may be done remotely rather than requiring hardware upgrades on sites in order to accommodate the separate carrier.
- A single carrier requires less electronic equipment capacity on the tower compared to two separate carriers (regardless of the carrier bandwidths).

5.7. Pooling spectrum between a larger operator which is providing widespread coverage and is experiencing (through spectrum crunch) a congested network and a smaller operator with lower utilized network and/or has a comparatively reduced or limited coverage, can be beneficial for both parties and the subscribers they are servicing. While the large operator will be able to address capacity and congestion issues, the small operator will benefit from the better network coverage of the large operator. Additionally, by allowing operators to pool their spectrum, operators will be able to achieve higher spectral efficiency and higher network capacity as compared to non-pooled spectrum, while also allowing for the possibility that these arrangements could assist smaller operators to launch new technologies which they may not be able to otherwise afford to roll-out .





5.8. As the Authority is aware, MTN has entered a spectrum pooling arrangement with Liquid Telecoms. Figure 8 below shows the number of sites that have and will benefit from the spectrum pooling arrangement.

4G	Actuals as at April 2021 (# of sites)	Additional May-Dec 2021 Scope (# of sites)
1800 MHz	10092	430

Figure 8

Source: MTN

5.9. The spectrum pooling has resulted in an improvement of average LTE speed of up to 40-70% and an average reduction of 20% in radio resources required. This increase in capacity and speed, has eased network congestion and has met the increased demand required by consumers while addressing the changing traffic patterns.

5.10. Spectrum pooling has benefitted consumers enabling superior connectivity and greater quality of service. This is evident by independent benchmark results and accolades awarded to MTN from MyBroadband (2020 and Q1 2021 Best Mobile Network), OOKLA (LTE average throughput performance) and Opensignal (Download Speed – Global Rising Star achievement). Should the spectrum pooling not be extended by the Authority on 1800MHz MTN will suffer a 20% loss of capacity.

## 6. Specific Questions - Issues for Consultation

It should be noted that answering the questions below without providing the context as we did above will not provide the Authority nor any other interested stakeholder a full picture with regards to the need of temporary spectrum and spectrum pooling. MTN's responses below should be read together with the context provided above.

6.1. **8.9 (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.

6.1.1. Yes, the Authority should consider further extending the duration of temporary radio frequency spectrum licences beyond 31 May 2021. Please refer to section 2 above for our detail analysis regarding the interim interdict in *Telkom SA SOC Ltd v ICASA*. MTN submits that the Authority's decision not to extend will be contrary to the National Disaster Regulations and the Ministerial Direction on COVID-19 which stipulates that ICASA must, to the extent possible, "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.”* The Authority's notice only cites the interim interdict as the only predicament which lead to the Authority's conclusion that further extension of temporary spectrum beyond 31 May 2021 may be contrary to the interim interdict. As our legal analysis of the interim interdict shows in section 2 above, MTN submits that the interim interdict does not in any way prevent the Authority from extending the spectrum temporary spectrum licenses. We also refer the Authority to section 4 above which explains the temporary spectrum benefits.

## **6.2. 8.9 (b) - The appropriate extension period**

6.2.1. MTN submits that a suitable period for the Authority to extend the assignment of temporary spectrum must be aligned with the ICASA auction timetable and permanent licensing of the high demand spectrum. This was initially envisioned by the Authority at the inception of the assignment of the temporary spectrum and that there is no benefit to the Authority, operators, consumers, or South Africa to deviate from this plan.

6.2.2. Towards the expiry date of the several temporary spectrums extended periods, MTN made applications to the Authority motivating for the extension. MTN submits this practice is time consuming and leads to use of resources that could be deployed elsewhere in the business. In addition, the telco market generally become anxious regarding the Authority's decision to extend or not to extend. We submit that this is unnecessary, and the Authority could assist by making the temporary spectrum licenses coincide with the permanent allocation of spectrum through the spectrum auction process which is underway.

## **6.3. 8.9 (c) - The spectrum fees which should be applicable to the extension period.**

6.3.1. In the current environment where the Authority has assigned spectrum on a temporary basis, operators such as MTN are deploying the temporary spectrum at considerable risk. Spectrum is the life blood of any operator, then similarly the network is the physical body through which it flows. A significant amount of time and capital is invested into creating a robust and superior network. If no investment is made the spectrum lays fallow and under-utilised. MTN has made investment on the temporary spectrum even though there has been no guarantee that the temporary spectrum will be extended (as the Authority is proposing in paragraph 8.7 of its notice) or that MTN would not be successful in the



acquisition of additional spectrum in the upcoming auction licensing process.

6.3.2. This investment without assurance of permanence could be viewed as a reasonable off-set to fees that could be charged for spectrum usage. However, in line with the objectives of the ECA it is necessary for the Authority to promote an environment of open, fair and non-discriminatory access to ECNS and ECS licensees,<sup>29</sup> consequently it is not unreasonable for the Authority to apply administrative incentive pricing (AiP) as has been the case for the past two extensions of the temporary spectrum assignment particularly as it relates to IMT2600 and IMT3500. This would also be in line with how current incumbents of these bands pay even though they enjoy the stability of a secured assignment.

6.3.3. MTN recognizes that the Authority has considered the usability of the 700MHz and 800MHz spectrum and reduced the aster factors (area sterilisation) to reflect this. That said, it would be fair and reasonable that these particular bands incur no fees whatsoever as is the case for the current incumbent users (broadcasters are not paying spectrum fees). Alternatively, as these particular spectrum bands are used nationally, where a sterilization factor of 600 is normally applied in the formulae for determining AiP value, the difference between the value applicable to operators for use of this band and the maximum value of 600 should be applied equally to the broadcasters. This is unlikely as the Authority discontinued in developing the regulations for charging for spectrum utilized by broadcasters, which is possibly a reason why these entities have no incentive to embrace the digital migration process. Additionally, such an even playing field would require the drafting and finalization of regulations to enforce this change in position, thus it would be more reasonable where in the case where the frequency spectrum band is shared with broadcasters (as is the case here) and where co-ordination is required with broadcasters (the primary users) that both parties are free from fees.

6.3.4. It should be noted that MTN has only deployed 10 sites in the IMT700 - 800 to date. We therefore believe that taking the above into consideration, the Authority should consider not to charge for the use of the IMT700-800 due to the fact that it is mostly "dirty" and deployment of sites in these spectrum bands is not possible at this stage in meaning manner.

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<sup>29</sup> Section 2(g) of the Electronic Communications Act, 2005.



6.4. **8.9 (d)** - Competition impact and proposed remedies, if any, of the further extension of temporary radio frequency spectrum licences.

6.4.1. It is generally recognized that access to spectrum, in terms of the total amount and the range of frequencies, plays an important role in determining the number of RAN sites that an MNO requires and further impacts an operators ability to provide and meet quality network service standards, reasonably expected from consumers in today's mobile services market.

6.4.2. Network quality is a critical aspect of competition as consumers value high-quality service and make purchase decisions. By way of an intuitive example, one would be motivated to switch mobile operators if the individual was experiencing repeated dropped calls. Network quality is based on two components, coverage, and connection quality. Coverage refers to the extent of the mobile operator's geographic connection range, that is, whether the consumer can connect to a network where they are.

6.4.3. Connection quality refers to the speed and reliability of the connection, which determines the extent to which consumers can utilise their connection in a useful way. In this respect, consumers consider reliability and speed when purchasing services from mobile network operators. Reliability refers to whether a capable device can consistently connect to the network in areas in which coverage is promised, while speed refers to how fast data downloads occur when connected.

6.4.4. Consumers prefer more reliable connection, with faster speeds. Speeds of data connections are generally measured in MB/s and increase with each generation of mobile network. For example, 2G will typically offer slower speeds than 4G. As such, we believe that the consumers choice of network provider is significantly based on network quality of service.

6.4.5. Another critical component of competition in the market is the price at which mobile services are sold. To lower mobile pricing, operators need to lower their cost of production and having access to spectrum lowers the cost of deploying mobile sites in respect of both coverage and capacity requirements.

6.4.6. As the Authority is aware, the demand for data has radically increased in the COVID-19 environment with the majority of South Africa's labour force working from home. As such, the temporary spectrum assignment is critical to achieving cheap, high quality mobile broadband until such time as the Authority can allocate additional spectrum to operators through a spectrum auction which is underway.



6.4.7. Operators therefore welcomed the additional radio frequency spectrum assigned by the Authority on a temporary basis. The temporary spectrum was instrumental and a key component in ensuring that operator's networks could meet the increased demand for capacity by citizens. It further allows operators to effectively compete by providing further price decreases, while maintaining and improving network quality in a COVID-19 environment.

6.4.8. Consequently, the extension of the temporary frequency spectrum allocation is critical to competitive dynamics in the market characterised by the sudden dramatic increase in data demand and traffic growth. If the temporary license is not renewed, operators will no longer be able to meet the competitive demands required to support current levels of data traffic due to COVID-19.

6.4.9. Therefore, removing the temporary spectrum is not a logical step in the COVID-19 environment, especially without first addressing the permanent assignment of spectrum to operators through the spectrum auction process. Moreover, it will inevitably result in adverse consequences to customers and the citizens at large due to the impact on operator's network availability and quality of service.

6.4.10. In addition, it is very likely that the temporary spectrum allocation has positive externalities in respect of the wholesale supply-chain, in that the allocation of temporary spectrum to the older operators promotes even stronger competition between MTN and Vodacom to provide the most competitive rates to other guest MNOs, and MVNOs, in order to drive traffic to their network.

6.4.11. Given the dire necessity for additional spectrum in South Africa, as well as the increased demand for data and growth in traffic, MTN believes that the temporary spectrum allocations to operators has positively impacted competition in the market and will continue to do so if extended.

**8.9(e)** - Consumer benefits in respect of spectrum obligations that the Authority should consider regarding further extension.

6.4.12. Consumer benefits under the current temporary spectrum license are well documented. These benefits will and should continue for as long as the COVID-19 pandemic continues. MTN submits that the Authority need not be prescriptive in what consumer benefits should be offered. All licensees are playing their part and ensuring that consumers are supported during these unprecedented times. If the Authority prescribes consumer benefits, the benefits prescribed must benefit consumers substantially as opposed to adding onerous reporting requirements on



licensees. Customers vote with their wallets, being too prescriptive would stifle innovation and limit variety for consumers to choose from.

6.4.13.MTN has offered many consumer benefits since March 2020 and will continue to do so. Below are the most notable consumer benefits:

6.4.13.1. Mobile Money (“MOMO”)

Through its Mobile Money platform (“MoMo”) MTN is enabling customer to keep safe by providing services that eliminate the handling of physical cash and providing access to heavily discounted data on the platform. The following MoMo benefits have been launched: -

- free transactions via MTN Mobile Money App;
- free peer-to-peer cash payments under R200;
- free card to wallet, instant EFT, and payments to agents and participating retailers.
- a flat rate of R10 to send non-MoMo users a cash voucher; and

discounted data and voice pricing on the MoMo platform discounts to help customers at home. For example, a daily 1GB hourly bundle can be purchased for as little as R1, a 7-day 5GB bundle for R60 and R120 for a 30-day 10GB bundle.

6.4.13.2. Promotions and Products

MTN launched over 120 Post Paid, Prepaid, Enterprise Business and FTTH products and promotions to support customers during the pandemic as set out in Annexure A below.

6.4.13.3. Public awareness SMS's

Since March 2020 MTN has sent out 353 808 905 free awareness campaigns to its subscriber base via SMS. MTN continues to send out SMS on receipt of instructions from GCIS. In addition to its obligations to send public awareness SMS's MTN also



embarked on various social media awareness campaigns. Please see examples of some of these campaigns below.



6.4.13.4. MTN customers still receive the daily free 20MB allocation of data since March 2020. Customers are able to send pictures, messages, video and to browse the internet, using the Ayoba app.

6.4.13.5. The allocation of temporary spectrum has realised multiple consumer benefits. It would not have been possible for MTN to provide all the benefits mentioned above without the assistance of the temporary spectrum and spectrum pooling. MTN is committed to continuing to provide benefits that support consumers during the pandemic and make access to data and other services more affordable.

## 7. Spectrum pooling arrangements

Please refer to details and context on spectrum pooling set out in section 5 above.

7.1. **9.2 (a)** - Spectrum sharing/ pooling arrangements on a temporary basis which ICASA should consider.

7.1.1. The benefits of spectrum pooling have been clearly demonstrated. The arrangement benefits both larger and smaller operators and has achieved spectral efficiencies. MTN submits that the Authority should continue to allow spectrum pooling to take place during the COVID-19 pandemic and beyond.

7.2. **9.2(b)** - Competition impact and proposed remedies, if any, which ICASA should consider regarding the spectrum sharing arrangements.

7.2.1. Network sharing is a well-established measure for mobile operators to reduce network-related costs relative to a standalone network. The



benefits of spectrum pooling, as set out above in section 5 have been recognised by the Authority in the Mobile Broadband Services Market Inquiry (MBSMI). In the MBSMI Findings Document published on 26 March 2021, ICASA states in paragraph 124, that spectrum pooling creates asymmetries which are not undue given asymmetries in subscribers. Furthermore, in paragraph 125, the Authority states that the arrangements give smaller operators bargaining power regarding facilities leasing/roaming arrangements thus increasing retail competition and consumer choice.

7.2.2. The above, indicates that the Authority has considered the spectrum arrangements and has found that there are no adverse competitive effects created by the pooling arrangements. Moreover, spectrum pooling may also enable the following pro-competitive outcomes:

- Fast and efficient rollout of new network and its cost-efficient operation;
- Fulfilling license commitments such as universal coverage, as spectrum pooling may result in lower costs of servicing sparsely populated rural areas for both parties to the arrangement; and
- It allows spectrum constrained operators access to spectrum to remain competitive, while allowing smaller operators to effectively utilise all of their spectrum and reduce costs.

7.2.3. While spectrum pooling plays an important role in enhancing spectral efficiency, these arrangements do not amount to an effective substitute for spectrum allocation. Both spectrum pooling arrangements and spectrum allocation are required in order to alleviate the extreme spectrum constraints facing mobile operators in South Africa.

7.2.4. It is also important to add that operators also wish to support government in its efforts to provide online access to school educational content during the period of lockdown and this will require additional capacity to achieve the required download speeds for such content. Further the increased demand and altered traffic patterns experienced on networks during the COVID-19 national disaster will not revert immediately or even fully back to the traffic requirements experienced prior to the declaration of the National State of Disaster. In order to ease network congestion and/or meet increased demand and changing traffic patterns on their respective networks post the National State of Disaster and further to assist smaller operators with the management of their network capacity in a sustainable and efficient manner, ICASA should consider extending the current pooling arrangements for a period of 36 months or beyond.





7.3. **9.2 (c)** - Consumer benefits in respect of spectrum obligations that the Authority should consider regarding the spectrum sharing arrangements.

7.3.1. As set out above, MTN submits that it is not necessary to prescribe consumer benefits in regulations. It is clear and well documented that licensees are supporting consumers and businesses during the COVID-19 pandemic. In addition, the spectrum pooling and temporary spectrum have contributed towards realising the consumer benefits. Quality of service and network capacity was put under pressure in the beginning of the COVID-19 pandemic. Spectrum pooling and the temporary spectrum have enabled quality of service to stabilise.

## **8. Obligations relating to IMT Radio Frequency Spectrum licensees**

8.1. **10.2 (a)** - Consumer benefits in respect of spectrum obligations, including reducing cost to communicate, which the Authority should consider regarding further extension.

8.1.1. Please refer to sections 0 with respect to consumer benefits.

8.1.2. District Virtual Classrooms Obligations

8.1.2.1. In terms of the temporary radio frequency spectrum license terms and conditions, MTN must provide virtual classroom platforms to 5 schools. The project is only in its infancy, as it took some time to bed down the requirements and to appoint service providers through procurement processes. MTN visited the first school on its rollout plan on 22 April 2021 to identify the classroom and consult with the principal and district and provincial education representatives. From the consultation it became clear that there is no plan in place to continue to maintain the district virtual classrooms after the 14-month period expires. MTN is concerned about the sustainability of the project. The project is a significant investment and the Department of Basic Education must ensure that teachers are adequately trained on how to integrate the solution pedagogically into the school environment to ensure that the solution will not become a white elephant. Furthermore, there needs to be a commitment from the Department of Basic Education to take responsibility for the solution, keep it maintained and procure connectivity after the obligation comes to an end. MTN submits that there must be a firm commitment and plan in place by the Department of Education to ensure the sustainability of the solution before MTN's obligations are discharged. In this regard, MTN is



prepared to assist to maintain the internet connectivity post the obligation at e-rate.

8.1.2.2. Further obligations must be commensurate with the availability of spectrum and must also consider the challenges with the IMT700 and 800 bands. MTN's obligations should only relate to the 2.6GHz and 3.5GHz spectrum allocated due to the fact that there are only few sites deployed on the IMT700 and 800 bands and it is not possible to deploy more site in these bands due to digital migration. Similarly, MTN has argued that the AIP pricing be adjusted accordingly in section 6.3 above and urged the Authority to consider not charging for IMT700 and 800 bands.

## **9. Type approval relaxation measures**

9.1. **11.2 (a)** - The validity period of temporary Type Approval authorisation.

9.1.1. MTN recommends that a clear distinction be made between type approval authorisation for equipment which utilizes the temporary Covid-19 spectrum and the type approval authorisation of equipment for operation on other frequency bands.

9.1.2. 9.1.2MTN recommends that the validity period of type approval authorisation for equipment operating utilising the temporary Covid-19 spectrum be aligned to termination of use of this spectrum.

9.2. **11.2 (b)** - Decommission period for temporary Type Approved equipment.

9.2.1. MTN recommends that the period for decommissioning of temporary type approved equipment utilized in the temporary spectrum frequency bands be aligned to termination of use of the temporary Covid-19 spectrum.

9.2.2. Users of type approved equipment that operates in the temporary Covid-19 spectrum should be given three (3) months period, after the termination of use of the temporary Covid-19 spectrum, to decommission their equipment. This will allow equipment owners to arrange sufficient funds required to cover the costs associated with decommissioning.

## **9.3. Complaints resolution**

9.4. **12.2 (a)** - Timelines required to resolve complaints in light of the eased lockdown restrictions.



9.4.1. MTN welcomed the relaxation of the 14-day turnaround time to resolve complaints. In the initial lockdown MTN was not able to cope with the vast volumes of complaints which occurred as a result of stores closing, deliveries of devices ceasing for a number of weeks and the unavailability of staff to assist with complaints while they were being equipped to work from home. Now that staff have settled into their new work environment, MTN commits to resolving complaints within the 14-day turnaround time.

## 9.5. Tariffs and Fees

9.5.1. 13.2 (a) - Timelines required to file tariffs and fees in light of the eased lockdown restrictions.

9.5.1.1. The tariff notification obligations under the Regulations regarding the Standard Terms and Conditions for Licensees, Government Gazette No. 33294 (as amended), require a 7-day notice period for new products and services offered for a fee charge or other compensation. In addition, regulation 5(1) of the End User and Subscriber Service Charter Regulations require licensees to notify ICASA of promotional tariffs 7-days before launching the promotion in the market. The ICT COVID-19 National Disaster Regulations published on 6 April 2020 in Government Gazette no. 43207 (as amended), reduced the notice period with respect to both regulations to 1 day. The relaxation of the 7-day notice period has assisted MTN greatly in the rapidly changing market over the COVID-19 disaster period. The 1-day notice period affords licensees an opportunity to respond quickly to competitive offers, which benefits consumers as promotions go to market earlier. In the past, when a competitor put out a promotional offer it takes MTN a few days to respond, and in addition to that, MTN needs to wait for a full 7 days before implementing a responding promotional offer. The 7-day notice period stifles competition and unnecessarily prolongs the benefit of cheaper and affordable prices and innovative products and promotions from reaching the market. There is no practical benefit to the 7-day notice period, since licensees do not advertise during the notice period, customers do not become aware of the offer prior to the notice period expiring. In addition, it is not an approval period therefore the Authority suffers no prejudice as a result of the reduced timeframe. The Bi-annual Report on the Analysis of Tariff Notifications Submitted to ICASA for the Period 01 July 2020 to 31 December 2020 is testament to the fact that there is stiff competition at a promotional level which should be encouraged and maintained



as opposed to being stifled by lengthy notification periods. The Authority remarks the following in the introduction of the report: "An overview of other<sup>30</sup> prepaid tariff notifications filed during the period under review is then depicted in Annexure A and it shows that there has been competition in terms of the promotions offered by the licensees in the market. Annexure B shows prepaid promotions and tariff plans which ended during the period under review."

9.5.1.2. During the reporting period 1 July 2020 to 31 December 2020, MTN filed 102 notifications of which 37 were promotions and 14 were extensions to promotions. 34 tariff and promotion notifications during the reporting period, related specifically to COVID-19 promotions and products, designed to assist customer during this difficult time. It is MTN's view that the relaxation of the tariff and promotion notification period has benefitted consumers and has demonstrated that there is no need for a 7-day notification period. MTN urges the Authority to extend the relaxation as part of the COVID -19 Disaster Management Regulations and to consider amending the relevant regulations in future to reduce the notice period.

## 9.6. Deployment of Electronic Communications Facilities

9.6.1. **14.2(a)** - Timelines for submission of notifications to ICASA regarding new installations of electronic communications facilities.

9.6.1.1. MTN submits that there is no need for the Authority to regulate new installations of electronic communications facilities. The rapid deployment guideline once finalized will be sufficient to serve as guide to licensees when installing electronic communications facilities. The Authority should avoid being overly prescriptive in issues which do not require regulations.

## 9.7. Zero-rating services

9.7.1. **15.2 (a)** - Further considerations the Authority should take into account with respect to zero-rating.

9.7.1.1. Since the start of the COVID-19 pandemic, MTN has zero rated over 1000 institutions. Some of these institutions have submitted

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<sup>30</sup> Other prepaid tariff notifications filed or received during the period under review which were not discussed in the main part of this report and continue to exist in the market after 31 December 2020.



multiple URL's for zero rating, therefore well over 1000 URL's have been zero rated. Since March 2020 MTN has provided more than 110 TB of zero-rated traffic. Over 5 million customers are accessing zero-rated URL's per month allowing them to continue with their studies, access vital health information on COVID-19, register for vaccines and search for jobs.

9.7.1.2. MTN has been monitoring abuse and tunnelling of zero-rated URL's. Initially, MTN noted high volumes of data usage on certain URL's. Furthermore, YouTube videos circulating where students were demonstrating how the controls implemented by MTN and other operators could be bypassed to make use of zero-rated data for gaming. MTN has managed to curtail this abuse but will continue the monitoring of zero rated traffic, should MTN fall victim to tunnelling and any other forms of abuse again, it may be necessary to suspend zero rating to the affected URL's to ensure sufficient quality of services for all customers.

9.7.1.3. The Directions on Zero-rating of Websites for Education and Health issued under Regulation 4(10) of the Disaster Management Regulations published on 5 June 2020<sup>31</sup> setting out the process for zero-rating have been very helpful to manage the zero-rating process. The Regulations do need to be strengthened. Regulation 6.4 excludes websites with dynamic IP addresses. The Regulations do not exclude the zero-rating of cloud-based websites. Unlike locally based websites, cloud-based websites cannot be restricted (in all instances). In other words, if a specific URL hosted in a cloud-based service is zero rated, then other URL's hosted in the same cloud are also zero-rated. MTN has made certain allowances for cloud-based URL's upon receiving special requests from Government departments, however this does expose MTN and other operators to abuse. MTN respectfully requests that the Directions on Zero-rating of Websites for Education and Health be amended to exclude cloud-based websites. This will not preclude MTN from zero-rating cloud-based URL's in future based on exceptional circumstances.

9.7.1.4. With respect to additional considerations, MTN committed to zero-rate 500 URL's in March 2020 prior to the publication of the Disaster Management Regulations and will honour this commitment even after the Disaster Management Regulations are repealed. In line with its commitment, MTN launched MTN OpenTime<sup>32</sup> where MTN

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<sup>31</sup> Government Gazette No. 43413 dated 5 June 2020

<sup>32</sup> <https://www.mtn.co.za/OpenTime/pages/default.aspx>



customers receive 500MB per month of free access to leading educational and employment websites.

9.7.1.5. Whist MTN is committed to continue zero rating URL's under the Disaster Management framework, the obligation will need to be curtailed. The current Regulations and temporary spectrum license conditions are open ended and do not provide for any limit to zero-rating URL's. There needs to be a balance between zero-rating and licensees' commercial interests. It is important that MTN continues to provide world class quality of service to its paying customers. Zero-rating utilises resources in the core network, which require upgrades and licenses to accommodate additional zero-rating, the radio network which is spectrum constrained and carrying higher traffic volumes as a result of the pandemic and the IP and transport network, which will also requires upgrades and the maintenance of licenses. Therefore, the Authority should consider maintaining the current level of obligation to avoid unintended consequences to the network such network security breaches as explained above.

## 10. Conclusion

In conclusion, the COVID-19 pandemic is still here for the foreseeable future. The fact that South Africa is currently at level 1 risk adjusted measures is not a reason to become complacent and reverse mechanisms put in place to support citizens during the pandemic. The risk adjusted level can be raised at any time, this is inevitable given that experts are warning of an impending third wave. Currently, the nation is witnessing a worrying upward trajectory in COVID cases. In recent days, a number of schools have activated quarantine protocols and home schooling, in the face of new infections. Countries in Europe and India are already experiencing the third wave. This has thrown India into crisis and South Africa needs to learn from this, be prepared and remain vigilant.

The Authority and the public at large must acknowledge the benefits realised as a result of the temporary spectrum and spectrum pooling. Consumers are the greatest beneficiaries of this, although consumers may not be able to account for the full benefits brought by the temporary spectrum because of the information asymmetry between operators and consumers, consumers will certainly be first to notice if the benefits of the temporary spectrum are removed along with the withdrawal of temporary spectrum and discontinuation of spectrum pooling arrangements. Temporary spectrum has ensured network performance and quality of service which provides citizens with the ability to carry on with their daily lives without interruptions during this difficult time.



The devastating scale and impact of the COVID-19 pandemic has resulted in coverage, quality of service and ease of access to high speed broadband, becoming a non-negotiable requirement in the lives of South Africans. At MTN, our commitment is to continue serving the people of South Africa with the best network, value-adding products, and our ongoing commitment to lower the cost to communicate. The potential removal of the temporary spectrum, prior to the completion of the spectrum auction process, will be a significant blow to the millions of economically marginalised South Africans that have come to rely on our zero-rated services, boosted speeds and coverage. We must continue to help South Africans through these extraordinarily trying times and it is for this reason that MTN pleads with the Authority to extend the access to the temporary spectrum until the finalisation of the auction licensing process. Respectfully, it does not serve the Authority nor the ICT industry to discuss the issue of temporary spectrum renewal every three months when we all know it is for the benefit of all South Africans to extend temporary spectrum until the auction licensing process is finalised.

