

## SACF COMMENTS ON ICASA'S REVIEW OF THE COVID REGULATIONS

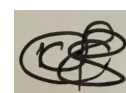
1. The SACF welcomes the opportunity to comment on the Authority's review of the COVID 19 regulations although the review may be premature in light of the fact that the level of risk has not changed, it merely fluctuates.

### Introduction

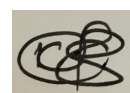
2. Little over a year ago the world as we knew it changed and became the stuff only seen in movies until now ... by 8pm on this day a year ago, the curfew began which limited movement to essential workers and activities. The rest of us were confined to our homes. Most businesses closed and very quickly had to switch to an online environment to survive – those that did, survived or had a hope of survival, those that didn't or couldn't were doomed with many having closed their doors.
3. Over the past two decades, South Africa has talked and planned for the burgeoning online world where we could work, learn, find entertainment, health and largely do everything that we needed from home or our devices.
4. The global COVID 19 pandemic changed all this overnight – companies adapted, and we began working from home, schools almost immediately shut down not waiting until the formal shutdown two days later, shops began delivery services and created an online presence, entrepreneurs began delivery services leaders in business came together as did government and business. The consequence was that we were finally moving forward on several critical drivers that have been stagnant for years or even decades.
5. The ICT sector quickly became an example of what can be accomplished when key role players work together. Key among the many achievements of this sector is the quick licensing of temporary spectrum to maintain a high level of quality of service to customers, rollout of infrastructure, fast tracking of equipment being permitted and expedited through customs.
6. The Minister of Communications and Digital Technologies promptly issued a policy direction to ICASA, which was then followed by regulations and the licensing of spectrum to enabling the new online environment.

### General Comments

7. While current infection levels are relatively low there is a current uptick in the infection rate and active cases. South Africa is not currently in a third wave although experts and scientists are watching with trepidation. The current rate of infection as of yesterday has increased to 6% which is rising steadily.



8. In previous waves of the pandemic South Africa has followed the global trends, while we are hopeful to buck the trend, every country including South Africa must be prepared. Over the past year South Africa has moved across various alert levels and consequent restrictions – beginning with the most stringent restrictions being relaxed and tightened again in response to risk. South Africa remains in a State of National Disaster which is renewed monthly in accordance with the Disaster Management Act.
9. Globally we have seen multiple waves of infection, with the the third wave being significantly more deadly than earlier waves which were followed by lockdowns. A lesson learned across the globe as a result of this pandemic is that infections are unpredictable and that countries must be prepared for rapid surges in infection rates often with little warning.
10. Despite a current lower infection rate, many companies continue to largely work remotely as the majority of the population has not yet been vaccinated and is likely to be the case until 40 million people have been vaccinated.
11. In addition, business leaders and experts locally and globally looking at the future of work suggest that the working environment will never return to the structure that we once knew and that a more likely scenario is a hybrid working environment with a combination of remote working with a more focused return to the physical working environment. This highlights the critical need for the permanent licensing of spectrum.
12. Since the start of the pandemic our members have noted increased volumes of traffic which continues to grow as we have seen work and more aspects of everyday life go online. This traffic increase has not abated.
13. Over the past year we have noted significant decreases particularly in data tariffs. This has been accompanied by innovative tariff plans offers consumers more choice to suit varied needs at suitable price points.
14. Notably, the Minister of Communications and Digital Technologies who issued the policy direction that paved the way for the COVID regulations that was in line with the broader framework and regulations issued by the Minister of COGTA for the State of National Disaster. The Policy Directions remain in place and are necessary.
15. In more severe levels of the lockdown, ICTs more specifically the ECNS licensees provided the platform that enabled continuation of work, learning and life remotely.



**Distinct and separate processes**

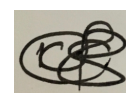
16. ICASA appears to link the legal challenge for the IMT ITA licensing process and the temporary licensing of spectrum. We respectfully disagree as we are of the view that these are distinctly different processes which have different objectives.
17. The temporary licensing of access to spectrum for the duration of the pandemic has been a tool in the toolbox of regulators globally to support the exponential sustained increases in traffic.

**Concerns raised over IMT 700 and IMT 800 in the legal challenge**

18. The permanent licensing of IMT 700 and IMT 800 is being challenged in the legal processes before the Gauteng High Court, we do not believe that this impacts the temporary assignment of access to spectrum as the temporary spectrum has been issued in the absence of the permanent licensing process.
19. Notwithstanding the reasons in the judgement for the interdict, we are of the view that nothing in the process prohibits the temporary assignment of spectrum.

**Alignment between access to temporary spectrum and the licensing of high demand spectrum**

20. The SACF and its members welcomed the Authority's plan to align the end of temporary spectrum licences to the start of the auction and process to licence the WOAN. This in our view would minimize the negative consequences to consumers and allow licensees to continue to provide services to licensees. The rationale that underpinned that approach by the Authority remains and is valid.
21. This approach was in the public benefit. However, the new approach suggested by ICASA of potentially not extending access to temporary spectrum does not contribute to continued economic activity and the much needed economic recovery.
22. Terminating access to temporary spectrum is indeed detrimental to licensees and will significantly impact consumers. It is a concern that the review focuses on benefits that services have had only, it should be broadened to consider significant harm that will result from withdrawing access.

**Traffic Patterns**

23. In our introductory comments we had highlighted the fact that traffic growth was exponential at the beginning of the COVID pandemic. As the economy opens up and access to sectors open up our members have noted continued growth in traffic.
24. Therefore, we would strongly argue against ICASA's assertion that it does not intend to extend access to the temporary spectrum due to matters raised in the pending litigation. This approach will undoubtedly harm the consumer, the economy and the country as a whole.

### Responses to questions

*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.*

25. The Authority must extend access to temporary spectrum for the duration of the pandemic. It would provide a degree of certainty to licensees and markets and will reduce the consumer harm, should access to temporary spectrum be removed it will prejudice consumers, the economy and the country.

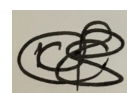
26. The basis for the Authority's original rationale for this approach has not dissolved and as a result it is unclear as to why there would be a change to the Authority's approach to ensuring access to temporary spectrum.

*The appropriate extension period.*

27. The SACF is of the view that access to temporary spectrum is essential and must continue for the duration of the pandemic, at least until the point that most of the population has been vaccinated, until the economy has recovered to pre-COVID levels.

28. Licensees will still need a period to wind down activities following the termination of access to the temporary spectrum. This period would ideally be between 3 and 6 months after the end of the state of national disaster.

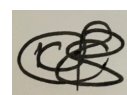
*The spectrum fees which should be applicable to the extension period.*



29. Licence fees cannot be viewed in isolation but rather as a package of obligations which comprises of licence fees and obligations. In addition, to the obligations imposed on licensees under the ICASA COVID regulations, it is important to note that many of our members have made significant contributions to the economy and region which cannot be discounted. They also have onerous obligations outside the purview of ICASA.
30. Licensees were charged spectrum fees for all the bands assigned on a temporary basis. It is important to note that ECNS licensees awarded spectrum in IMT 700 and IMT 800 bands are the secondary users and are being charged for access while, the primary users are not. Therefore, in the interests of fairness and equity, temporary spectrum in these bands should not attract a licence fees going forward.

### **Virtual Classrooms**

31. Licensees with temporary spectrum assignments that have been allocated virtual classrooms schools and are required to provide an end-to-end solution including devices and connectivity. Implementation of the obligations has been delayed due the changing specifications and the onerous level of the specifications which has made the start of of the implementation of the obligations difficult and drawn-out. Implementation has now begun and will provide valuable learnings.
32. We would urge the Authority to only consider a comprehensive review at the end of the 14-month obligations.
33. The package of obligations has increased in scope and scale since the grant of the temporary spectrum. Access to the spectrum is temporary and must be proportionate to access granted where the cost of the obligations cannot tip the scale of costs as that would be unsustainable and detrimental to the very public good that ICASA seeks to achieve.
34. Therefore, the SACF is of the view that the obligations should be held at the current level and not increased any further.



Competition impact and proposed remedies, if any, of the further extension of temporary radio frequency spectrum licences.

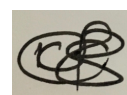
35. The Authority held an open process and invited all eligible licensees to apply through the prescribed process for spectrum. In the absence of barriers to entry including the absence of applications fees, no licensee was prevented from applying for temporary spectrum.
36. In addition, the spectrum was granted on a temporary basis, therefore we do not see a competitive harm arising. Therefore, no competitive remedies would apply.
37. It is important to recognize that existing licensees benefit directly and indirectly from access to the temporary spectrum. Five licensees were granted access to temporary spectrum in addition to the introduction of TV White Space licensees. While five licensees have been granted direct access to the temporary spectrum, access to this spectrum also supports their roaming partners.

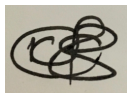
*Consumer benefits in respect of spectrum obligations that the Authority should consider regarding further extension*

38. Access to the temporary has supported the exponential growth of traffic and which continues to grow. It has and continues to support economic activity.

### **Spectrum pooling arrangements**

39. Spectrum pooling and sharing arrangements is permitted under the spectrum regulations but does require regulatory approval and enables more effective and efficient usage of the available spectrum.
40. However, spectrum pooling and sharing cannot replace the licensing of temporary spectrum particularly during the State of National Disaster. Spectrum sharing and pooling in combination with temporary spectrum, we believe will continue to provide support for the continued growth in demand during the pandemic.



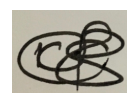


### **Type Approval Relaxation**

41. Type approval has long been a significant bottleneck due to the significant delays in processing. The relaxation of the temporary Type Approvals has proved highly valuable in fast-tracking essential ICT equipment being brought into the country especially under the immense burden introduced by the COVID-19 to connect more people to quality Broadband networks.
42. Licensees have been extending networks to support demand and as they do this, additional new equipment becomes necessary. Therefore, it is critical that the type approval relaxation remains in place.
43. As some equipment has been in use for a prolonged period, the Authority must introducing a process to enable stakeholders to apply for a transition to permanent type approval as some temporarily approved equipment
44. Given that ICASA is in the process of introducing new equipment authorization regulations to address the prevailing Type Approval challenges, an extension on the validity period of temporary Type Approval authorization will sustain the current momentum in the industry. All existing temporary Type Approved equipment which are already certificated in other Region 1 countries (e.g. EU Type Examination Certification issued by Notified Bodies in the European Union) should be allowed to continue to serve the public while awaiting formal ICASA Type Approvals.
45. It is recommended that, The process of type approval standards adoption in South Africa need not delay the deployment of essential ICT infrastructure during this unprecedented period in the lives of South Africans when connectivity and quality of service demands have soared.

### **Complaints Resolution**

46. The mobile device and connectivity has become one of the most indispensable tools of the pandemic due to its multifunctionality – an enabler.
47. While, our members have done their best to maintain the standards prescribed in the End User Subscriber Service Charter and is contained in the regular reports submitted to the Authority.
48. However, due to the unpredictability of the pandemic and infection rates and non-availability of key personnel it is useful to continue to maintain a framework that caters for varied potential levels of infection o key staff.



49. Therefore, we are of the view that relaxed framework for the resolution of complaints should exist, while licensees strive to achieve the prescribed targets.

### **Reporting on the continued deployment of network facilities**

50. The regulations currently require licensees to report on equipment deployed within 7 days which in the current environment becomes somewhat onerous and as such we are of the view that the Authority ought to consider revising this to enable licensees to report 60 days after installation or quarterly rather than after 7 days.

### **Zero-rated websites**

51. The regulations have provided for the zero-rating key educational and health sites. The list of zero-rated sites continues to grow and is updated weekly. While the framework setting out the criterion for inclusion has been helpful in refining the list. It is nevertheless important that the sites that licensees are required to zero rate remains reasonable and strikes a balance between supporting commercial traffic and access as public good.

52. During the setup of zero-rated sites there had been lengthy discussions precluding access to cloud-based services from the zero-rated sites. This was in the main due to network systems being unable to restrict and differentiate between cloud traffic. It is a scenario of all or nothing. There it would be useful to include this exclusion that has been agreed and is being implemented in the rules for ease of reference.

### **Tariff Notifications**

53. The COVID regulations introduced a shortened timeframe for tariff notifications reducing the requirement from 7 days of notification to 1 day. Licensees submit detailed quarterly tariff reports The SACF supports the reduced timeframes, as it has provided a good learning. Tariffs were submitted to the Authority initially for notification ahead of implementation. Accordingly, in our view there is no consumer harm as a result of a shorter period between submitting a tariff notification and implementation. Instead, it creates better agility and promotes competition.

54. The tariff report has demonstrated the continued downward trend of pricing.

55. The SACF supports the retention of the submission of tariffs a day before implementation as it is for information and not approval.

