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Independent Communications Authority of South Africa

Private Bag X10

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Attention: Mr Davis Kgosimolao Moshweunyane

By email: Covid19regulations@icasa.org.za

Dear Sirs

RE: NOTICE INVITING WRITTEN REPRESENTATIONS: REVIEW OF THE ICT COVID-19 NATIONAL DISASTER REGULATIONS

1. ICASA has published a notice requesting representations in relation to the National Disaster Regulations. e.tv's legal team are dealing with the finalization of the supplementary founding affidavit which is being delayed through the failure of ICASA to produce the rule 53 record timeously. As such, e.tv is only able to provide limited representations in respect of the Notice and it confines its submissions to one aspect of this notice. This should not be understood to be a waiver of its rights to object to any other aspect of the Notice or any action taken pursuant to the Notice.
2. In the Notice, ICASA has stated that "The Authority does not intend to further extend the expiry date of the temporary radio frequency spectrum 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."
3. ICASA does not explain what these alleged issues are. This is a material deficiency in the Notice and makes it very difficult to make meaningful representations in response to the Notice.
4. More concerning is the fact that to the extent that ICASA is suggesting that the interim interdict in any way precludes ICASA from extending the expiry date of the temporary radio frequency spectrum licences beyond 31 May 2021, there is simply no basis on which this assertion could be made. There is no explanation in the Notice (or in ICASA's application in terms of Section 18) on what basis ICASA could reach the conclusion that the order in any manner precludes it from extending the expiry date of the temporary radio frequency spectrum licences. This has been set out at length in e.tv's answering affidavit in the Section 18 application which was brought by ICASA to suspend the interim relief order granted by Judge Baqwa. Indeed, one of the bases on which ICASA seeks the suspension of Judge Baqwa's order is the argument that the order of Baqwa J precludes

it from extending the temporary radio frequency licences. It was pointed out in e.tv's answering affidavit that there is no provision of the order that has this effect.

5. The statement in the Notice is, therefore, concerning.
6. Given the inconsistent position adopted by ICASA and the fact that there is absolutely no basis on which it could be suggested that the order precludes ICASA from extending the expiry dates of the temporary radio spectrum frequency licences, the Notice is misleading. What is more problematic is that ICASA has published this Notice after it received e.tv's answering affidavit which pointed out clearly that the order does not have any such effect. This gives rise to the ineluctable conclusion that ICASA's actions in this regard are motivated by an ulterior purpose.
7. Alternatively, it would suggest that one of the bases on which ICASA approached the High Court for an order suspending the order of Baqwa J was based on a false premise. ICASA now indicates that it is not intending extending the expiry date. In the section 18 application it argued that it was imperative that it should be able to do so and that the order precluded it from doing so.
8. It is, therefore, important that ICASA provides a proper indication of what the issues are in the litigation, so that meaningful submissions might be made. Further, ICASA is requested to clarify that there is no impediment in the order that precludes it from extending the expiry dates and that if it were not to extend the expiry dates it is for unrelated reasons.
9. e.tv accordingly provides this response to the notice as a provisional one. As matters currently stand, it is not possible for e.tv to respond to the notice meaningfully. e.tv thus reserves its rights to provide a fuller response if and when ICASA provides the clarifications requested.

Kind regards



Philippa Rafferty
Legal and Regulatory