



**Independent Communications Authority of South Africa**

<b>MINUTES OF A SPECIAL COUNCIL MEETING</b>		
<b>Date</b>	<b>20 May 2021</b>	
<b>Time:</b>	<b>17:00</b>	
<b>Venue:</b>	<b>Microsoft Teams</b>	
<b>Present</b>	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
<b>By Invitation</b>	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
<b>Partial Attendees</b>	[REDACTED]	Executive: LRCCC
	[REDACTED]	Executive: Corporate Services
	[REDACTED]	Acting Exec. Compliance
	[REDACTED]	Acting Exec. PRA
	[REDACTED]	SM: Market Regulation PRA
	[REDACTED]	SM: ICT Licensing Services
	[REDACTED]	SM: Spectrum Licensing
	[REDACTED]	GM: Regions
<b>Apologies</b>	[REDACTED]	Member

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No.	Action Item	Person Responsible
1.	<p><b>Opening and apologies</b></p> <p>The Chairperson opened the meeting at 17:00 and welcomed all present.</p> <p><b>Apology</b></p> <p>Cllr [REDACTED] was on sick leave.</p> <p><b>The opening and apologies were noted.</b></p>	<b>Chairperson</b>
2.	<p><b>Declaration of interest</b></p> <p><b>No conflict of interest was noted.</b></p>	<b>Council</b>
3.	<p><b>Ratification of the Agenda</b></p> <p><b>The agenda was adopted as presented.</b></p>	<b>All</b>
4.	<p><b>Fifth Amendment to the ICT Covid-19 National Disaster Regulations</b></p> <p>The Executive for Legal, Risk &amp; CCC presented the item:</p> <p>The purpose of the submission was to request Council to approve the amendments to the Information and Communications Technology (ICT) COVID-19 National State of Disaster Regulations (COVID-19 Regulations).</p> <p>4.1. On 6 April 2020, the Authority published its first COVID-19 Regulations. The purpose of the COVID-19 Regulations is to prescribe minimum standards that Licensees must adhere to</p>	<b>Council</b>

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	<p>during the subsistence of the National State of Disaster in order to:</p> <p>4.2.1 facilitate the dissemination of information during the National Disaster period;</p> <p>4.2.2 enable the facilitation of the responses to the National State of Disaster;</p> <p>4.2.3 enable the implementation of measures that may be necessary to prevent an escalation of the National Disaster, or to alleviate, contain and minimise the effects of the National Disaster; and</p> <p>4.2.4 ensure that there is a continuation of, and the provision of, ICT services in the Republic.</p> <p>4.2. Since 6 April 2020, the Authority has reviewed, and amended the Regulations three times, in line with the adjusted levels of the National State of Disaster.</p> <p>4.3. The COVID-19 Regulations were published when the country was placed on COVID-19 hard lockdown, and subsisted when the Alert level system was introduced.</p> <p>4.4. Considering that the country is currently on Alert level 1, wherein several economic activities have been allowed to resume and operate, the Authority resolved to review the COVID-19 Regulations.</p>	

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	<p>4.5. On 23 April 2021, the Authority published a Notice inviting representations from interested parties on the review of the COVID-19 Regulations.</p> <p>4.6. The Authority received fifteen (15) written representations for consideration. Two (2) written representations were submitted after the deadline, and, therefore, were not considered.</p> <p>4.7. The late representations were from:</p> <p>4.4.1 The ICASA Consumer Advisory Panel at 16:04; and</p> <p>4.4.2 The Free Market Foundation at 16h16.</p> <p>4.8. The Authority received two (2) requests for confidentiality in terms of section 4D (4) of the ICASA Act, from Telkom and Vodacom.</p> <p>4.9. The requests were granted, as they met the criteria set in section 4D (4) of the ICASA Act.</p> <p>4.10. The following representations were made under different themes, and ICASA's response to those representations is outlined:</p> <p>4.10.1 <u>Complaints Resolution</u></p> <p>4.10.1.1 That Licensees be exempt from resolving complaints within the prescribed time frames.</p> <p>4.10.1.2 The Authority was of the of the view that, considering the eased lockdown</p>	



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	<p>regulations, licensees should be required to resolve complaints received by them within 20 working days.</p> <p>4.10.2 <u>Tariffs Notifications</u></p> <p>4.10.2.1 That Tariffs be lodged with the Authority one day prior to the launch of the product.</p> <p>4.10.2.2 The Authority was of the view that the period of one day be extended on condition that it will apply only to tariff notifications which are aimed at supporting consumers during the COVID-19 pandemic. Any other tariff notifications i.e. price increases, name changes etc. should still comply with the 7-day notification requirement.</p> <p>4.10.3 <u>South African Sound and Television Broadcasting Services Performance Period</u></p> <p>4.10.3.1 That the performance period during the National State of Disaster begin from 7h00 to 21h00.</p> <p>4.10.3.2 The Authority is of the view that there was a need to revert to the original performance period (i.e. 5h00-23h00) in light of the written representations. This</p>	



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	<p style="text-align: right;">will enable television licensees to broadcast programmes falling within the prime slot.</p> <p>4.10.4 <u>Local Content Obligations</u></p> <p>4.10.4.1 That television broadcasters be exempted from compliance with the local television content quotas, specific advertising and programming requirements during the National State of Disaster. In contrast, sound broadcasters are exempted from compliance with specific programming requirements and promises of performance, but must comply with the local content music quotas.</p> <p>4.10.4.2 The Authority was of the view that the television local content quotas should be revised while the sound broadcasting programming requirements exemption should be lifted, considering the eased lockdown and the written representations.</p>	



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	<p data-bbox="344 488 1241 573">4.10.5 <u>Quarterly Submission of Programming Logs and Recordings to the Authority</u></p> <p data-bbox="478 649 1241 792">4.10.5.1 That during the National State of Disaster, the requirement for licensees to submit recordings continue be suspended.</p> <p data-bbox="478 869 1241 1124">4.10.5.2 The Authority was of the view that the suspension of the requirement for licenses to submit recordings should be lifted, as these can be submitted electronically.</p> <p data-bbox="344 1200 1241 1285">4.10.6 <u>Requirement to Convene Community Meetings including any Annual General Meetings (AGMs)</u></p> <p data-bbox="478 1361 1241 1563">4.10.6.1 That Community Broadcasting Service licensees be exempt from holding community meetings or AGMs until the National State of Disaster is terminated.</p> <p data-bbox="478 1639 1241 2007">4.10.6.2 The Authority's view is that, in light of the eased lockdown restrictions, community broadcasting service licensees should conduct community meetings or AGMs virtually or physically, subject to, inter alia, adherence with COVID-19 health protocols, directions and regulations as</p>	



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	<p>prescribed in terms of the Disaster Management Act, No 57 of 2002. Where it is not possible for a community broadcasting service licensee to conduct community meetings or AGMs, proof thereof must be submitted to the Authority to this end.</p> <p>4.10.7 <u>Submission of Applications</u></p> <p>4.10.7.1 That Subscription Broadcasting Licensees may submit their channel authorisation application four days prior to the launch.</p> <p>4.10.7.2 The Authority submits that the above provision should also be extended to Free-To-Air Broadcasting Licensees, considering the written representations. However, the number of days to process the applications should be extended from 4 to 7 days to cater for influx of applications in the event of the third wave.</p> <p>4.10.8 <u>Deployment of Electronic Communications Facilities</u></p> <p>4.10.8.1 That Licensees are required to notify ICASA regarding new installations of</p>	

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	<p>electronic communications facilities on their networks within seven days.</p> <p>4.10.8.2 The Authority should consider revising the reporting period from 7 days to 20 working days to accommodate licensees with larger networks.</p> <p>4.10.9 <u>Type Approval</u></p> <p>4.10.9.1 That the temporary Type Approvals be valid for a period of three (3) months after termination of the National State of Disaster.</p> <p>4.10.9.2 Considering the written representations, the Authority is of the view that the decommissioning of the equipment operating utilising the temporary COVID-19 spectrum, shall take place within three (3) months after the expiry of the temporary radio frequency spectrum licences to allow time for the decommissioning.</p>	



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	<p>4.11. <u>Temporary assignment of Radio Frequency Spectrum</u></p> <p>4.11.1 On 31 March 2021, the Authority extended the expiry date of temporary radio frequency spectrum licences, from 31 March 2021 to 31 May 2021.</p> <p>4.11.2 The Authority stated in the Notice to review the COVID-19 Regulations, that it does not intend to further extend the expiry date of the temporary radio frequency spectrum licences beyond 31 May 2021, due to other issues raised in the pending litigation between ICASA vs Telkom and others, under the Pretoria High Court case number: 66778/2020.</p> <p>4.11.3 The Authority requested a legal opinion from Senior Counsel on the options available to the Authority for the extension of the temporary spectrum licences beyond 31 May 2021 considering the written representations.</p> <p>4.11.4 The legal opinion indicated that the temporary spectrum licences for IMT700 and IMT800 should not be extended beyond 31 May 2021, since the High Court found, amongst others, that the use of these bands by mobile operators, whilst e.tv is still “the incumbent occupant”, would “result in the degradation and interference with its broadcast signal and dilute its commercial exclusivity and competitive strength.”</p>	



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	<p>4.11.5 The opinion further indicated that there was no reason why ICASA could not extend the temporary licences for the IMT2300, IMT2600, IMT3500 spectrum bands, as the High Court did not make any findings against the use of these spectrum bands, since there is no dispute about their availability. In addition, the High Court did not find that the use of these bands has any negative consequences for broadcasters such as e.tv.</p> <p>4.12. <u>Comments and Inputs</u></p> <p>4.12.1 Council requested that where Regulations have been subjected to amendments, a tracked version of the amendments to be made available the public on the Authority's website, as it makes it easy to follow which amendments have been effected.</p> <p>4.12.2 Council enquired about the materiality of the late submissions of written representations, and that CAP be sensitised about the need to make written submissions on time.</p> <p>4.12.3 Management indicated that late submissions were not considered as a general practice and that it will engage with CAP on the consequences of late submissions. Management noted that the Chairperson of CAP, had enquired about the CAP submission not being considered as it was received late.</p>	

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	<p>4.12.4 The CEO, Company Secretary will engage with the Chairperson of CAP.</p> <p>4.13. <u>It was resolved that:</u></p> <p>14.13.1 The duration of the temporary radio frequency spectrum be extended by a period of three (3) months (i.e. 1 June to 31 August 2021).</p> <p>14.13.2 The period for licensees to maintain virtual classrooms platforms should be adjusted accordingly, from 14 to 17 months. The payment of fees will be prorated and calculated in terms of Radio Frequency Spectrum Fee Regulations 2010 as amended.</p> <p>14.13.3 The litigants against the IMT spectrum ITA should during the three (3) months extension period consider resolving the pending litigation.</p>	
15	<p><b>International Engagements</b></p> <p>The Executive Corporate Services presented the item.</p> <p>The purpose of the submission was to request Council to nominate members who will be attending several international engagements.</p> <p><b>The submission was deferred to the next meeting of Council where Council Committees will be allocated.</b></p>	CEO/ECS
16	General	ALL



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	<p><u>The letter received by the office of the Chairperson from Vodacom, MTN and Telkom</u></p> <p>6.1. The Chairperson received a letter jointly signed by the CEOs of Telkom, Vodacom and MTN respectively.</p> <p>6.2. The letter requested that ICASA should consider the extension of the temporary spectrum.</p> <p>6.3. Council requested that the letter be shared with the external Senior Counsel to advise whether Council should respond to the letter. The draft response will be shared with Council for comments and inputs before it is sent to the recipients.</p> <p><u>The Authority's Internal Information Leaks and (Cybersecurity)</u></p> <p>6.4. Council requested that the alleged internal information leaks and the cybersecurity concerns of the Authority should be placed on matters arising until it is resolved. The request is due to working from home and conducting meetings on the virtual platform. Council was of the view that the Authority needs to guard against cyber breaches that might compromise the Authority and any internal information leaks.</p>	
17	<p><b>Closure</b></p> <p>The Chairperson thanked all who were present at the meeting and closed it at 18:13pm.</p>	Council
18	Date of next meeting: TBA	Secretariat

Signed:  \_\_\_\_\_

(Chairperson)

Date: 30 / 07 / 2021