

ENSafrica telecoms and media in brief

Below, please find issue 14 of ENSafrica's telecoms and media in brief, a snapshot of the latest telecommunications and broadcasting developments in South Africa.

broadcasting and telecommunications

- **GG43418 – 2020 GEN NN317: General Notice – Draft Code for Persons with Disabilities Regulations for Further Public Comments**
 - On 12 June 2020, the Independent Communications Authority of South Africa (“**ICASA**”) published a notice inviting written representations on the Draft Code for Persons with Disabilities Regulations (“**Draft Regulations**”). The Draft Regulations are accessible [here](#).
 - The stated purpose of the Draft Regulations is to prescribe a code for persons with disabilities to be adhered to by electronic communication services licensees and broadcasting service licensees, aimed at ensuring that persons with disabilities have access to services. For the purposes of the Draft Regulations, a disability refers to a long-term or recurring hearing and visual impairment.
 - In respect of broadcasting licensees, the Draft Regulations prescribe a number of basic standards, and go on to prescribe the percentage attainment required per year in respect of public, commercial free to air, subscription and community channels. Television broadcasting service licensees will be required to implement certain accessibility services, which include:
 - audio description;
 - sign language;
 - subtitles; and
 - closed captioning.
 - The Draft Regulations also impose other requirements on broadcasting licensees which, for example, cater for specific issues such as, breaking news and photosensitive viewers.
 - Similarly, the Draft Regulations also seek to impose certain basic standards with regard to electronic communication service (“**ECS**”) licensees. An ECS licensee must ensure that all electronic communications devices ready for purchase are universally designed to cater for the needs of persons with disabilities. “Universally designed” is defined in the Draft Regulations as “the design of products, environment, programmes and services usable by all

people, to the greatest extent possible, without the need for adaptation or specialised design". An ECS licensee must also ensure:

- that all its fixed-line telephones being offered to the public have hearing aid compatibility; and
 - that all its mobile handsets being offered to the public have visual aid compatibility.
- Furthermore, the Draft Regulations make provision for a National Relay System ("**NRS**"). In this regard, an ECS licensee must provide for a NRS that translates voice-to-text and vice versa, on calls made by persons who are deaf or have a hearing or speech impediment. The NRS must offer the following relay services, in conformity with certain specifications that are also detailed in the Draft Regulations:
 - type and read;
 - speak and listen;
 - SMS or text-based services;
 - video; and
 - captioned telephony.
 - Should you require any assistance with preparing a written representation please contact [Wilmari Strachan](#).
 - All written representations must be submitted by 27 July 2020 by either courier service, fax or e-mail in MS Word format for the attention of Ms Nditsheni Hangwani, Code for Persons with Disability Project Leader to:
 - Address: ICASA, Block B, 350 Witch-Hazel Avenue, Eco Point Officer Park, Eco Park, Centurion,
 - Fax: (012) 568 3418
 - E-mail: nhangwani@icasa.org.za and CodeforPwDsCommittee@icasa.org.za

broadcasting

- **GG43398 - 2020 GEN NN 311: General Notice – Framework to Qualify to Operate a Secondary Geo-Location Spectrum Database**
 - On 5 June 2020, ICASA published the Framework to Qualify to Operate a Secondary Geo-Location Spectrum Database ("**Qualification Framework**").
 - The Regulations on the use of Television White Spaces require the systems operating as Secondary Geo-location Spectrum Database ("**S-GLSD**") to undergo qualification and be certified by ICASA before offering any services in South Africa.
 - This Qualification Framework is intended to establish the qualification framework for interested entities to operate as a S-GLSD service provider. Entities (individuals/organisations) that are interested in being S-GLSD providers must apply through ICASA.
 - More information can be found [here](#).
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in the news

- **Services to assist with remote learning**
 - The South African Government is considering the launch of a satellite services to assist with remote learning.
 - Minister of Higher Education, Science and Technology, Blade Nzimande, has said that “As we try to find better ways to implement effective multi-modal, augmented remote learning systems, we are considering the use of space science and earth observation technologies and platforms in support of our plans to reach vulnerable students”. The minister also indicated that the Council for Scientific and Industrial Research is “completing the task of establishing a geospatial planning map identifying the location and distribution of learning and co-learning sites in all the districts of South Africa to enable us to support students in the period before full return to campuses.”
 - Another initiative is also underway, Vodacom Business and Microsoft South Africa have partnered to provide access to continuous, connected digital learning for South Africa’s education institutions, educators and learners through their Connected Digital Education initiative. The Connected Digital Education Platform is an education platform that is intended to enable remote learning through affordable connectivity.
- **MTN to launch 5G network**
 - *BusinessTech* has reported that MTN intends to launch its 5G network at the end of June. At present, Vodacom and Rain offer 5G networks.
 - MTN (as with Vodacom) will be using emergency spectrum allocated by the government to provide 5G services. This brings into question how the operators intend to continue to provide the 5G network at the end of the state of emergency or in November as this is the cut-off point for access to the emergency spectrum.
 - If you have been waiting for 5G super-connectivity to roll out overnight and instantly change your life, you may be disappointed. It took nearly 10 years for 4G to become the dominant technology in cellular connectivity and some believe that it might even take longer for 5G to be adopted.
- **Constitutional Court handed down judgment in *Telkom case***
 - We [previously reported](#) that Telkom was taking a fight with the City of Cape Town to the Constitutional Court.
 - On 25 June 2020, the Constitutional Court decided on the matter and unanimously refused to grant Telkom leave to appeal. Telkom had appealed against the dismissal of its application by the Western Cape Division of the High Court.
 - The matter concerned the question of whether the exercise of right held in terms of section 22 of the Electronic Communication Act, 2005 is subject to compliance with municipal by laws and policy.
 - The matter began in 2017 when Telkom installed a cellphone mast in Heathfield without prior approval from the City. When the City informed Telkom that it was in breach of the municipal planning by-law, Telkom approached the Western Cape High Court and later the Supreme Court of Appeal to challenge the municipal planning by-law and the City’s telecoms

mast infrastructure policy. Telkom had planned to install 135 masts across Cape Town and went ahead and installed seven without the City's approval. Telkom argued that the municipal planning by-law does not apply to them and that they are free to install cellphone towers wherever they deem fit, irrespective whether the land is zoned for that use or not.

- The Constitutional Court, in considering the application for leave to appeal, held "The fact that telecommunications infrastructure is established on land creates an overlap between the functional areas of municipal planning and telecommunications which are located in different spheres of government. In accordance with our jurisprudence, the fact that Telkom is licensed to offer telecommunications services does not, without more, entitle it to exercise the rights in section 22(1) of the Act to the total disregard of municipal planning and zoning powers. The Act itself stipulates that the exercise of those rights is subject to compliance with applicable law which includes the impugned by-law." The Constitutional Court then went on to hold that the judgment of the Supreme Court of Appeal "is unassailable and, as a result, the granting of leave here would serve no purpose."
- Of further interest and importance was the following observation made by the Constitutional Court:
 - "There is one further matter that needs to be mentioned. This relates to time periods taken by the City, and probably other municipalities, to decide applications for approval to build cellular phone masts and other related infrastructure. The average period is between six months and a year. This is not conducive to the licensees' needs and conditions imposed upon them by the regulator. However, this is a process issue which is not relevant to the interpretation of the Constitution. It may be resolved by the relevant authorities prescribing shorter time periods within which municipalities must determine telecommunications related applications for approval."
- One can only hope that this dictum reaches the eyes and ears of all municipalities so that approvals are not needlessly delayed.

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