

ENSafrica telecoms and media in brief

Below, please find issue 1 of ENSafrica's telecoms and media in brief, a snapshot of the latest telecommunications and broadcasting developments in South Africa.

telecommunications

- **regulations and notices**
 - **GG42361 – NN197: Notice Regarding the Final International Mobile Telecommunications (IMT) Roadmap 2019**
 - on 29 March 2019, the Independent Communications Authority of South Africa ("ICASA") published the Notice Regarding the Final International Mobile Telecommunications ("IMT") Roadmap 2019. ICASA recognises that there is a growing demand for mobile broadband in South Africa and a need for more bandwidth capacity in general. Lower frequencies are to be deployed in order to propagate a wider market, especially to ensure reach to the rural areas. The roadmap indicates current licensees who will be moved out of or within bands that have been identified for IMT services.
 - as a result of the public interest nature of this project, ICASA allowed only 14 days for comments on the IMT Roadmap to be submitted. Closing date for comments was 18 April 2019.
 - **GG42358 NN518: The Ordering System Specification for Number Portability**
 - on 29 March 2019, ICASA published the Ordering System Specification ("OSS") for geographic, non-geographic and mobile number portability in terms of regulation 7 of the Number Portability Regulations of 1 October 2018.
 - the OSS specifies the process in terms of which a recipient operator and a donor operator exchange information between each other in order to provide number portability to a subscriber. It outlines the type of information to be sent, its format, the means of communication, the times when communications may be sent, the time limits for responses, and the handling of error conditions.
 - the OSS further prescribes the process that must be followed whenever a geographic, non-geographic and mobile number(s) assigned to a subscriber is/are ported from one operator to another. The OSS for geographic and non-geographic and mobile number portability will come into effect on a date to be determined by ICASA by notice in the *Government Gazette*.

- **GG42337 NN166: Notice Regarding the Final Radio Frequency Migration Plan 2019**
 - on 29 March 2018, ICASA published the notice regarding the Final Radio Frequency Migration Plan 2019.
 - ICASA has concluded that the forward-looking time frame for a process of spectrum migration should be between three to five years from the moment of announcement. Therefore, to ensure that there is no confusion, where there are multi-year radio frequency spectrum licences, the duration of these licences should generally not exceed three years.
 - the plan will come into effect on a date to be determined by ICASA by notice in the *Government Gazette*.
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 - the plan will come into effect on a date to be determined by ICASA by notice in the *Government Gazette*.
- **GG42337 NN165: Notice regarding the Radio Frequency Spectrum Assignment Plan for the Frequency Band 825 to 830 MHz and 870 to 875 Mhz**
 - on 29 March 2019, ICASA published a notice regarding the Radio Frequency Spectrum Assignment Plan for the Frequency Band from 825 to 830 MHz and 870 to 875 MHz.
- **GG42335 NN194: Notice on the Status of the Process to Licence International Mobile Telecommunications**
 - on 31 March 2019, ICASA published a notice on the status of the process to licence international mobile telecommunications.
 - the notice indicates that ICASA is still working closely with the Department of Telecommunications and Postal Services in the development of the draft policy direction. This is after the Minister of Telecommunications and Postal Services and ICASA had signed a settlement agreement in terms of which ICASA had agreed to withdraw the invitation to apply regarding prospective application for radio frequency spectrum licences, within the designated ranges 2500-2690 MHz, the 790-862 MHz, and the 703-790MHz bands, for the purpose of providing national broadband wireless access services.
 - the minister and ICASA have agreed to work together in line with their respective statutory mandates to ensure attainment of the policy objectives for universal provision of broadband services. The consultation process is still underway.

- **GG42370 NN201: Administrative Fees: Notice Regarding the Increase of Administrative Fees in Relation to Services Licences**
 - on 1 April 2019, ICASA published the notice regarding the increase of administrative fees in relation to service licences.
 - the notice states that the administrative fees associated with applications and registrations of service licences have been increased by 4.7% based on the average Consumer Price Index.
 - the increase became effective on 1 April 2019.
- **GG42377 NN202: Administrative Fees – Notice in Relation to Type Approval**
 - on 3 April 2019, ICASA published a notice in relation to type approval.
 - effective from 1 April 2019, all administrative fees associated with type approval will be increased by 4.7% based on the average consumer price index.
- **findings documents and position papers**
 - **GG42363 NN521: Findings Document and Position Paper on an Inquiry into the Role and Responsibilities of the Independent Communications Authority of South Africa in Cybersecurity**
 - on 29 March 2019, ICASA published its findings document and position paper on the inquiry into the role and responsibilities of ICASA in cybersecurity matters.
 - the conclusion in the findings document states that it is clear that regulating a safe space in cyberspace is of public interest and it is the duty of the state and its agencies to ensure that South Africans are safe even in cyberspace.
 - it is therefore the general position of ICASA that cybersecurity is a multi-facet concept and a multi-stakeholder approach and enabling legislation is required to clarify roles and avoid duplication of resources. ICASA stated that its role regarding information security is provided by sections 2(q), 36(1) and (2) of the Electronic Communications Act, 2005 and that it has a mandate in the cybersecurity space even though it is limited to network reliability and information security.
 - in order to formulate a precise definition on cybersecurity, ICASA will be guided by the International Telecommunication Union. With regards to setting standards, ICASA will collaborate with the Department of Telecommunications and Postal Services, the Department of Justice and industry.
- **in the news**
 - **ICASA reveals the state of South Africa’s ICT sector**
 - ICASA is responsible for the collection of statistics to monitor and report on the progress of information and communication technology (“ICT”) in South Africa.
 - This information is then used by ICASA to publish the ICT Sector Report annually, with the inaugural version having been published in March 2016.
 - according to the State of ICT Sector in South Africa 2019 Report, South Africa’s ICT sector continues to demonstrate dynamic growth, increasing 12% from ZAR204-billion in 2017 to ZAR229-billion in 2018.

- ICASA notes in its report that the ICT sector is one of the country's largest job markets and one of the largest contributors to the economy, driven particularly by mobile services.
 - telecommunication services showed the highest revenue growth year-on-year out of the sector in 2018, increasing by 14.4% from ZAR163-billion to ZAR187-billion, while broadcasting services revenue increased slightly by 3.7% from ZAR35-billion to ZAR36-billion.
 - Paseka Maleka, ICASA's spokesperson has however stated that, reflecting a common theme of concern for ICASA, "while the ICT sector continues to demonstrate dynamic growth, it has not necessarily met the Authority's vision of affordable access to the wide range of communication services. Though access to mobile services continues to grow, broadband access (both fixed and mobile) remains at unsatisfactory levels due to perceived high costs of communication services; in particular, data services." ICASA has embarked upon several interventions aimed at addressing this challenge, these include the mobile services market review processes and the regulations of data expiry and transfer rules.
 - ***Dennegeur Estate v Telkom (366/2018) (29 March 2019)***
 - on 29 March 2019, the Supreme Court of Appeal ("**SCA**") handed down judgment in a battle primarily between Telkom and Vodacom, whereby Vodacom sought to be permitted to continue to use certain Telkom ducts and sleeves, which Telkom installed in an residential estate, to roll out its fibre network.
 - Telkom had been successful in the High Court against Vodacom, arguing in their application that Vodacom had committed an "act of spoliation" ie, depriving it of its possession of the Telkom infrastructure.
 - in the subsequent appeal, the SCA found that, provided there was vacant space in the ducts and sleeves, and that Vodacom was permitted to lay its cable therein. This conclusion therefore meant that "Vodacom's optic fibre network did not disturb Telkom's use of the ducts and did not prevent Telkom's operation of its network".
 - interestingly, the SCA recognised that "reliable electronic communications go beyond just benefiting the commercial interest of licensees to the detriment of ownership of property. The [Electronic Communications Act] is designed to avoid this no winner conflict. What it seeks is to bring our country to the edge of social and economic development for rural and urban residents in a world in which technology is so obviously linked to progress."
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broadcasting

- **regulations and notices**
 - **GG42374 NN534: Amendment of the National and Provincial Party Elections Broadcasts and Political Advertisements Regulations, 2014**
 - on 2 April 2019, ICASA published the National and Provincial Party Elections Broadcasts and Political Advertisements Second Amendment Regulations, which came into effect upon publication.
 - the regulations amended the manner in which broadcasting time is divided between political parties contesting in the upcoming elections. They also serve to ensure that an equitable distribution of broadcasting time is achieved between those parties only contesting in the provincial elections, and those parties which will contest both in the provincial and national elections.
- **findings documents and position papers**
 - **GG42391 NN573: Notice to Publish Draft Findings Document on Inquiry into Subscription Television Broadcasting Services**
 - on 12 April 2019, ICASA published a notice to publish the draft findings document on the Inquiry into Subscription Television Broadcasting Services.
 - these draft findings follow on the notice published by ICASA on 11 July 2016 of its intention to conduct an inquiry into the state of competition in subscription television broadcasting services. This draft findings document expresses ICASA's view and position on issues raised before a final findings document is published. The draft findings document expresses a number of interesting statistics that emerged during ICASA's research and various processes of consultation.
 - for example, despite the growth in over-the-top services ("**OTT services**") in South Africa, about 96% of South African viewers still watch live television and only 3% of the population watch online video content.
 - the draft findings document indicates that there was much debate around defining the relevant market for the competition analyses, but eventually found that OTT services constitute an out-of-market competitor due to a number of factors which include the high data costs and slow connections experienced in South Africa.
 - ICASA, in the face of such statistics and findings, stated that "Multichoice appears to engage in what could be considered a threat inflation tactic that is not underpinned by any hard evidence in the South African market, beyond anecdote", further concluding that: "Multichoice is firmly in control of the market and will continue to be so in the foreseeable future, despite the entry of OTTs in South Africa" and found that the relevant markets are characterised by ineffective competition and therefore proposed various licence conditions to remedy the market failure.

- the draft findings document provides stakeholders with the opportunity to respond to ICASA’s findings before a final findings document is developed.
 - depending on the outcome of the final findings document, ICASA may consider developing regulations in terms of section 67(4) of the Electronic Communications Act to give effect to these findings. A separate public consultation process will be held in that case.
 - written representations must be submitted to ICASA by no later than 4pm, on 21 June 2019 (45 working days from the date of publication) marked for attention: Ms Violet Molete. Delivery address: Block B, 350 Witch-Hazel Avenue Eco Point Office Park Centurion, or email at vmolete@icasa.org.za or subscriptioninquiry@icasa.org.za. Telephonic inquiries should be directed to: +27 12 568 3715.
- **GG42337 NN164: Findings Document and Position Paper on the Use of Digital Sound Broadcasting in South Africa**
 - on 29 March 2019, ICASA published its Findings Document and Position Paper on the Use of digital sound broadcasting in South Africa.
 - ICASA has concluded that there is a need for digital sound broadcasting in South Africa. Once the Department of Communications has finalised the policy directive, ICASA anticipates that it will be capable of licensing standards for Digital Sound Broadcasting.

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