

ENSafrica telecoms and media in brief

Below, please find issue 11 of ENSafrica's telecoms and media in brief, a snapshot of the latest telecommunications and broadcasting developments in South Africa.

COVID-19

- **ICASA is reviewing how it conducts business amidst the spread of the Covid-19 pandemic**
 - The Independent Communications Authority of South Africa ("ICASA") is reviewing its day-to-day business to align itself accordingly to mitigate the spread of Covid-19, it has said in a statement on the [ICASA website](#). No mention has been made regarding the deadlines for submissions which are communicated below and in our previous telecoms and media in brief, and we recommend that any stakeholders continue as if the deadlines will remain.
 - ICASA has advised that the decisions have been taken:
 - Precautionary Measures:
 - All public hearings have been suspended; ICASA will continue to monitor and assess the situation in a four-week cycle;
 - All applications and equipment that accompany applications for Type-Approval will not be accepted from individuals. Applicants are therefore requested not to send any equipment to ICASA, when the need arises for equipment to be submitted, the applicant will be informed by an ICASA official to submit.
 - Applicants can make use of the [online service](#) to submit Type-Approval applications.
 - All other applications such as the expected pre-registrations for community broadcasting services have been extended from 31 March 2020 to 30 April 2020.
 - Visitors to ICASA premises:
 - All visits (local and international), including customer walk-ins to the ICASA premises have been suspended until further notice.
 - ICASA is reducing face-to-face meetings by encouraging the use of telephones, email correspondence and video/teleconferencing in lieu of in-person gatherings, particularly for meetings with clients or stakeholders.
 - All consumer-related queries must be sent to consumer@icasa.org.za, while all other enquiries are sent to info@icasa.org.za.
 - Travel:

- The Council of ICASA has taken the decision to suspend all forms of international and domestic travel from 17 March 2020 to 17 April 2020.
- All essential domestic air travel to be undertaken will be dealt with on a case-by-case basis.
- All employees who have travelled and entered South Africa from high-risk countries since mid-February have been asked to present themselves for testing

broadcasting and telecommunications

- **GG43050 – 2020 GEN NN 118: General Notice – Submission of Annual Forecast of Licence Fees and Universal Services and Access Fund Contributions for 2020/2021 by Broadcasting and Electronic Communications Services (“ECS”) and Electronic Communications Network Services (“ECNS”) Licensee**
 - On 28 February 2020, ICASA issued a general notice calling upon all broadcasting and ECS/ECNS licensees to submit an annual forecast of licence fees and Universal Services and Access Fund Contributions (in keeping with the “annual turnover” definition in the Universal Services and Access Fund Regulations published in Government Gazette no. 34010 dated, 10 February 2011) for 2020/2021. ICASA also clarifies in its notice that only Broadcasting service licensees pay a certain portion to the Media Development and Diversity Agency (“**MDDA**”). As a result, every broadcasting service licensee, in their respective submission, must specify a portion of the amount it will pay to the MDDA. Furthermore, every Broadcasting and ECS/ECNS licensee must also submit a trial balance; detailed management accounts and reconciliations of the trial balance; and a calculation of the forecast of the licence fees Universal Services and Access Fund contribution.
 - In respect of licensees that may not be in operation yet, ICASA has drawn attention to regulation 5(4) and (5) of the Regulations on Amendment Standard Terms and Conditions for Individual Licences, 2015 (published in Government Gazette no. 39875 dated 30 March 2016. The said regulations respectively provide that “where a Licensee has not commenced operations, it must provide the Authority with a letter from external auditors confirming that it has not generated any revenue from the licensed service” and “where a Licensee is not legally required to have audited financial statements, it must submit a letter from an independent accounting officer and must submit a clearance certificate from the South African Revenue Services as proof that it did not generate any revenue from the licensed service.”
 - Every broadcasting and ECS/ECNS licensee must submit the requisite information on or before 30 April 2020.
 - It should be noted that any licensee who fails to submit the required information by the deadline referred to above, will be in contravention of

section 4(3)(g) of the ICASA Act and schedule 3 of the Regulations. If found guilty of contravening the aforesaid legislative requirements, a licensee may be liable to pay a fine of up to ZAR1-million.

- Submissions must be made to the following persons:

Broadcasting:

Attention: Ms Busi Mashigo
Manager: Broadcasting Compliance
By email: BMashigo@icasa.org.za

ECS/ECNS:

Attention: Ms Keitumetse Setshedi
Manager: ECS/ECNS Compliance
By email: Ecsecns.compliance@icasa.org.za

telecommunications

- **GG43130 – 2020 GEN NN198: Notice on the Licensing Process of an Individual Electronic Communications Network Service ("I-ECNS") and Radio Frequency Spectrum ("RFS") Licence**
 - On 23 March 2020, ICASA published a notice outlining the process and timelines on the licensing of an Individual Electronic Communications Network Service ("I-ECNS") and accompanying Radio Frequency Spectrum ("RFS") Licence. This notice was published pursuant to the Policy on High Demand Spectrum and Policy Direction on the Licensing of a Wireless Open Access Network ("WOAN"). The notice indicates that the analysis of applications and all relevant submissions, deliberations, decision and the award of a licence should take place in the third quarter of 2021.
- **GG43047 – 2020 GOV NN 200: Conformity Assessment Framework for Equipment Authorisation**
 - On 25 February 2020, ICASA published the Conformity Assessment Framework for Equipment Authorisation (better known as Type Approval).
 - The purpose of the Conformity Assessment Framework is to prescribe conformity assessment approaches for equipment authorisation to improve the efficiency of product placement in the market. These changes stem from ICASA's findings that "South Africa's mechanism to oblige certification bodies to authenticate test reports along with the results is reactive and ineffective. There is a lack of post-market surveillance in place to continuously ensure that the equipment and systems placed in the market maintain conformance with the applicable technical standards. Manufacturers, distributors and suppliers are dissatisfied with the turnaround time to place ICT equipment in the market, they are of the view that the turnaround time is lengthy. This is because the Authority had adopted a single approach of Conformity Assessment for all categories of equipment."

- The Conformity Assessment Framework will come into effect at a date to be determined by ICASA by notice in the Government Gazette.

broadcasting

- **GG43077 – 2020 GEN NN157: Draft Amendment Regulations Regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the Electronic Communications Act, 2005**
 - On 5 March 2020, ICASA published the Draft Amendment Regulations Regarding Standard Terms and Conditions for Class Licences under Chapter 3 of the Electronic Communications Act, 36 of 2005 ("Draft Amendment Regulations"). ICASA invites all interested persons to submit written representations on the Draft Amendment Regulations. A copy of the Draft Amendment Regulations will be made available on the ICASA website.
 - Written representations must be submitted to ICASA by no later than 16h00 on 17 April, by post, hand delivery or electronic mail and marked for the attention of:

Fikile Hlongwane (Project Leader)
Email: fhlongwane@icasa.org.za
Tel: 012 568 3197

OR

Thabo Ndhlovu (Project Manager)
Email: TNdhlovu@icasa.org.za
Tel: 012 568 3185

in the news

- **ICASA Engages with Licensees to Open Their Services to All South Africans as the Country Fights the Scourge of the COVID-19 Pandemic**
 - ICASA has issued a press release on 19 March 2020, stating that in light of the recent developments with regard to the spread of the COVID-19 pandemic, it has written to licensees in an effort to ensure that they make communication services available to all South Africans. These engagements take place in the context of the expected surge in usage of data as the majority of South Africans across all sectors have no option but work from home, learn from home and carry on their day to day life activities (i.e. shopping, entertainment, etc.) from home through technological means. This will result in a spike in data usage, particularly as consumers also access information with regards to the pandemic – thus placing strain on the capacity of networks.
 - We have extracted the following information from the [press release](#):

- “The engagements are taking place across all sectors regulated by ICASA, and include consideration of the following measures:
 - **Telecommunications:** ICASA is requesting all network service providers to heed the call to enable the country to mitigate the spread of COVID-19, by facilitating easy and affordable (and/or free) access to data. In this regard, the Authority is engaging the sector on possible ways of radio frequency spectrum relief for the duration of the declared state of disaster to ease congestion, ensure good quality of broadband services, and enable licensees to lower cost of access to consumers (particularly in relation to education, emergency and other social services). Furthermore, to the extent that the licensees will wish to tailor packages (specifically data packages) to respond to the pandemic, the Authority will consider relaxation of the tariff notification filing requirements to enable speedy roll-out of such packages.
 - **Broadcasting:** ICASA is engaging with licensees to facilitate ease of access to information about the pandemic to all South Africans. All individual and class broadcasting services are required to make Public Service Announcements (PSAs) about the COVID-19 in the public interest, and as required by the relevant authorities. Over and above this, the subscription broadcasting services licensees have been requested to open both their audio and television bouquets to consumers that do not subscribe to their services. This will assist the public to have access to information that they can use to deal with the scourge of the virus that is facing the country.
 - **Postal services:** The postal services sector (both reserved and unreserved services) has been requested to advise ICASA of measures they have taken or intend to take to assist customers during this disaster period.
- The Authority believes that these measures are critical during this period of declared state of disaster. They are in line with the Authority’s mandate of regulating in the public interest to enable the ICT sector to implement critical measures that would see South Africans being able to deal with the pandemic”, concludes Dr. Modimoeng.
- **Vodacom and MTN to cut prices**
 - Vodacom and MTN have reached agreements with the Competition Commission to reduce prices.
 - Vodacom has announced that one of its initiatives is to cut the cost of its 1GB monthly bundle from ZAR149 to “no more than” ZAR99. This is a 34% reduction and will be effective from 1 April 2020. Vodacom will also, from next month, zero-rate a number of websites. This means that its subscribers won't have to use their internet bundles to access university portals, Wikipedia, and certain government e-service portals and departmental websites, like those of the

Department of Home Affairs and school enrolment platforms. Vodacom Group CEO Shameel Joosub, said that Vodacom initiatives will result in ZAR2.7billion in additional savings for customers.

- MTN, on the other hand, has announced that its changes will focus on the affordability of monthly prepaid bundles, lifeline data and the zero-rating of data for public benefit service websites. From 1 April 2020, MTN will similarly reduce the price of its 1GB monthly bundle to ZAR99.
 - On 2 December 2019, the Commission released the Data Services Market Inquiry final report with findings and recommendations, you can access our article on this report published in the previous Telecoms in Brief [here](#).
 - The report recommended that two mobile network operators, Vodacom and MTN, reach agreement within two months with the Commission to reduce data prices, particularly for monthly bundles, and to address the structure of data pricing, reducing the cost per MB for smaller sub-1GB bundles relative to the 1GB price.
 - This follows on from President Cyril Ramaphosa's announcement in his State of the Nation Address that low-income households will receive free daily data to gain access to educational and other public interest websites.
 - The Ministry of Communications and Digital Technologies and ICASA have welcomed the announcement and agreement reached between the Competition Commission and Vodacom in ensuring that the cost of data is reduced and stating that these changes serve to "align our common interest and mandate of affordable cost of communication for all South Africans."
 - These announcements come at an opportune time as ICASA is currently undertaking two critical regulatory processes that have a bearing on the pricing of data services in the medium term, namely; the licensing of the International Mobile Telephony (IMT), also known as high demand spectrum as well as an inquiry into mobile broadband service markets. In our previous [Telecoms in Brief](#), we considered a few of the stakeholder responses received thus far on ICASA's Information Memorandum on High Demand Spectrum, while in our [January edition](#), we discuss the discussion document generally.
- **Telkom heads to the Constitutional Court**
 - Telkom has taken its fight with the City of Cape Town to the Constitutional Court. Telkom has claimed that the City lacks jurisdiction to decide where it can erect cellphone masts. 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.

- Telkom has now approached the Constitutional Court in an effort to have the SCA's judgment overturned, stating that "the roll-out of the 5G networks in South Africa will be the next important development in meeting the telecommunications needs of the country. If the SCA's judgment is not overturned on appeal, it will substantially retard the ability of network licensees to ensure the effective and efficient roll-out of this new network capability in South Africa, apart from impeding the roll-out of existing 3G and 4G networks."
- **Constitutional Court set to hear RICA "Spying Case"**
 - The lawyers for the amaBhungane Centre for Investigative Journalism and journalist Sam Sole have appeared in the Constitutional Court seeking to confirm the orders made by the Pretoria High Court in September 2019. The thrust of the argument being that "the Regulation of Interception of Communications and Provision of Communication-Related Information Act ("**RICA**") violates the right to privacy in a number of areas — and for that reason it is unconstitutional. RICA is the legal basis for and permits the interception of people's communications by authorised state officials, including police and state security.
 - The Pretoria High Court has declared that RICA is unconstitutional to the extent that it failed to contain adequate safeguards to protect the rights to privacy, access to courts, freedom of expression and the media, and legal privilege. The Minister of Justice is not opposed to the application of the confirmation of orders made by the high court. However, the minister said the act has to be reviewed and asked that the executive be given space to make changes to the law. The State Security Minister and the Minister of Police, however, both oppose the application on various grounds.
 - The Constitutional Court has reserved its judgment in the matter.

This email contains confidential information. It may also be legally privileged. Interception of this email is prohibited. The information contained in this email is only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying and/or distribution of the content of this email, or the taking of any action in reliance thereon, or pursuant thereto, is strictly prohibited. Should you have received this email in error, please notify us immediately by return email. ENSafrica (ENS and its affiliates) shall not be liable if any variation is effected to any document or correspondence emailed unless that variation has been approved in writing by the attorney dealing with the matter.

ENSafrica | Africa's largest law firm

info@ENSafrica.com | [ENSafrica.com](https://www.ENSafrica.com)

[privacy statement](#) | [unsubscribe](#)

