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GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. 328

24 April 2012

ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005):

REGULATIONS

**NOTICE OF REVIEW APPLICATION IN RELATION TO THE IMPLEMENTATION
OF THE RADIO FREQUENCY SPECTRUM FEES REGULATIONS, 2010**

The Independent Communications Authority of South Africa hereby gives a notice to radio frequency spectrum licensees of the Authority's intention to institute a review application in relation to the implementation of the radio frequency spectrum fees regulations, 2010;

The reasons and explanations for the institution of the review application before the South Gauteng High Court are contained in the Schedule hereunder.



WILLIAM CURRIE

ACTING CHAIRPERSON

ICASA

Schedule

The Independent Communications Authority of South Africa ("ICASA") has instituted proceedings in the South Gauteng High Court, Johannesburg to review and set aside certain of its decisions and actions in the context of the Radio Frequency Spectrum Licence Fees Regulations, 2010 (published in GN 754 in *Government Gazette* 33495 of 27 August 2010) and the Radio Frequency Spectrum Regulations, 2011 (published in GN 184 in *Government Gazette* 34172 of 31 March 2011).

The Radio Frequency Spectrum Licence Fees Regulations, 2010 detail the fees that are payable by holders of radio frequency spectrum licences issued by ICASA in terms of the Electronic Communications Act 36 of 2005 ("ECA") in respect of their radio frequency spectrum assignments. Regulation 12 of the Radio Frequency Spectrum Licence Fees Regulations, 2010 provides that the Regulations will come into effect on 1 April 2011. Prior to 1 April 2011, on 10 March 2011, ICASA published a notice in the *Government Gazette* (GN 103 in *Government Gazette* 34096 of 10 March 2011) indicating that the commencement date of the Radio Frequency Spectrum Licence Fees Regulations, 2010 was deferred until 1 April 2012. The intention was that the relevant provisions (being regulation E1) of the Radio Regulations, 1979 (published in GN R. 2862 of 28 December 1979) would apply in the intervening period from 1 April 2011 to 31 March 2012. However, ICASA published the Radio Frequency Spectrum Regulations on 31 March 2010, which provide: (1) in regulation 39(1), for the repeal of the Radio Regulations, 1979; (2) in regulation 19(2), that the fees payable by radio frequency spectrum licence holders will be determined in accordance with the Radio Frequency Spectrum Licence Fees Regulations, 2010; and (3) that the Radio Frequency Spectrum Regulations came into effect on 1 April 2011.

ICASA has instituted review proceedings in the South Gauteng High Court seeking an order:

1. to the extent necessary, extending the period of 180 days provided for in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA") to expire on the date that the application was instituted;
2. reviewing and setting aside and/or declaring unlawful and invalid regulation 12 of the Radio Frequency Spectrum Licence Fees Regulations, 2010;

3. reviewing and setting aside and/or declaring unlawful and invalid the notice purporting to defer the commencement of the Radio Frequency Spectrum Licence Fees Regulations, 2010 published by ICASA on 10 March 2011;
4. reviewing and setting aside and/or declaring unlawful and invalid the following provisions of the Radio Frequency Spectrum Regulations, 2011:
 - 4.1 regulation 19(2); and
 - 4.2 regulation 39(1), only insofar as it purports to repeal regulation E1 of the Radio Regulations, 1979;
5. declaring that:
 - 5.1 the Radio Frequency Spectrum Licence Fees Regulations, 2010 commenced on 1 April 2012; and
 - 5.2 from 1 April 2011 until 31 March 2012, the licence fees payable in respect of radio frequency spectrum licences were governed by regulation E1 of the Radio Regulations, 1979 as it stood on 31 March 2011;
6. directing any respondent that opposes the application to pay the costs of this application, jointly and severally, the one paying the other to be absolved; and
7. granting ICASA further and/or alternative relief.

The Minister of Communications and all holders of radio frequency spectrum licences issued by ICASA in terms of the ECA have been cited as respondents in the application brought by ICASA. ICASA does not seek any relief against any of these respondents (save for a costs order in the event of their opposition). These parties are cited as respondents merely on account of their interest in the subject matter of these proceedings.

In light of the fact that there are more than 48 500 radio frequency spectrum licensees, ICASA approached the High Court for an order directing that the application be served by way of,

amongst other things, the publication of notices in two national newspapers. The order was granted on 17 April 2012 by the Honourable Justice Maluleke.

Holders of radio frequency spectrum licences who wish to obtain a copy of the review application to be instituted by ICASA may obtain a copy at www.icasa.org.za or by contacting Mr Mpilo Ngxingo the acting General Manager: Legal at ICASA at Tel: 011 566 3607, Fax: 011 566 3608 and Email: MNgxingo@icasa.org.za or Ms Phumzile Nkosi at Tel: 011 566 3593; Fax: 011 566 3594 and Email: pnkosi@icasa.org.za.

Any holder of a radio frequency spectrum licence who wishes to oppose the application for the relief set out above must deliver a notice to that effect to ICASA's attorneys (Bowman Gilfillan, 165 West Street, Sandton, 2146, Reference: Livia Dyer) by 17 May 2012 and must file its answering affidavit within thirty days thereafter. A copy of the record of the proceedings leading to ICASA's decisions that are sought to be reviewed and set aside will be filed with the Registrar of the South Gauteng High Court within five days after ICASA receives any notice of intention to oppose the application and the relevant respondents will be notified that ICASA has done so. The record may then be obtained from the Registrar of the South Gauteng High Court.

For any further information, please contact ICASA's attorneys:

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