



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY MEETING OF COUNCIL		
Date	06 July 2022	
Time:	08:00	
Venue:	Microsoft Teams	
Present	████████████████████	Chairperson
	██████████	Councillor
	██████████████	Councillor
	██████████████████	Councillor
By Invitation	██████████████	CEO
	██████████████	CFO
	██████████████████	CAE
	██████████████	Corporate Secretary
	██████████████	Secretariat Officer
	██████████████	Secretariat Officer
	██████████	Secretariat Officer
Partial Attendees	██████████████	Manager: Broadcasting Frequency Coordination
	██████████████	Senior Manager: Type Approval and Numbering
	██████████████	Senior Manager: Legal Regulatory Support and Legislative Drafting
	██████████████	Senior Manager: Talent and Performance Management
	██████████████	HR & RemCo Chairperson
	██████████████	Risk and Compliance Management Specialist
	██████████████	Audit Manager: Internal Audit
	██████████████	External Service Provider
Apologies	██████████████	Councillor



No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>1.1. The Chairperson opened the meeting at 08:00 and welcomed all present.</p> <p>The following apology was noted:</p> <p>1.2. Cllr [REDACTED] was on leave.</p> <p>The opening and apologies were noted.</p>	Chairperson
2.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
3.	<p>Ratification of the Agenda</p> <p>3.1 Invitation to Huawei Eco-Connect at Sandton Convention Centre on 8 July 2022 to be tabled under General.</p> <p>The agenda was ratified.</p>	All
4.	<p>Minutes of previous Council meeting – 31 March 2022</p> <p>The minutes were adopted as presented.</p>	Council
5.	<p>Matters Arising</p> <p>The update on the matters arising document was noted by Council.</p> <p><u>The following comments were made:</u></p> <p>5.1. Council expressed that the Subscription TV inquiry is an important project which should be prioritised, but in a proper manner to yield the desired results.</p> <p>5.2. Council expressed that the matter regarding Dormant Licences being Item 3 should be addressed in contexted with item 1 of the</p>	CEO



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	<p>Matters Arising Document and further that there should be a reboot to ensure that a proper diagnosis is given.</p> <p>5.3. Council expressed that the SANDF matter has been on the MA for the past six years, Council expressed the view that National Treasury should be compelled to intervene in this matter as the money owed by SANDF belongs to the National Treasury.</p> <p>The update was noted, and the Corporate Secretary is to summarise all the points made.</p>	
6.	<p>International Engagements</p> <p>There was no update on International Engagements.</p>	CEO / Exec: Corporate Services
7.	<p>Licensing of IMT (“Standing Item”)</p> <p>A. Legal Opinions on Cell C’s request for payment arrangement in respect of the Auction fee</p> <p>7.1. The purpose of this submission was for Council to note the legal opinion prepared by ██████████ SC, instructed by ██████████ ██████████, regarding the interpretation and application of the Invitation to Apply on the Licensing Process for International Mobile Telecommunications (“IMT”) in respect of the provision of the mobile broadband wireless access services for urban and rural areas using complementary bands IMT700, IMT800, IMT2600 and IMT3500 published in the Government Gazette 45628 (“ITA”) on 10 December 2021 (“the ITA”).</p> <p>7.2. In terms of the ITA:</p> <p>7.2.1 The payment of the Auction Fee must be paid into the Authority’s bank account within thirty (30) working days after the public announcement of the award process results by the Authority for the Lots acquired in IMT2600 and IMT3500 (para 18.1.3);</p>	Cllr ██████████



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	<p>7.2.2 Non-payment, late or incomplete payment of the Auction Fee may lead to the non-issuing of the Licence. The Lot may then be auctioned at a later stage, or the Authority may determine an alternative licensing process in terms of the Radio Frequency Spectrum Regulations, 2015 (as amended) para 18.1.6.</p> <p>7.3. Auction Fee was to be paid by the winning bidders by no later than 9 May 2022.</p> <p>7.4. On 5 May 2022, the Authority received correspondence from Cell C requesting for a payment arrangement wherein it would pay 10% of the Auction fee on 9 May 2022 and the balance on 30 July 2022.</p> <p>7.5. On the IMT Committee (“the Committee”)’s reading, the ITA does not make provision for such an arrangement. On 9 May 2022, the IMT Committee sought a legal opinion on whether there is a legal basis for acceding to the request for a payment arrangement from Cell C having regard to paragraphs 18.1.3 and 18.1.4 of the ITA.</p> <p>7.6. On 9 May 2022, the Committee sent a letter to Cell C directing them to the provisions in the ITA and that the Authority is exploring its legal options.</p> <p>7.7. On 9 May 2022 the Committee received the legal opinion from Senior Counsel (“SC”). On the same date that the legal opinion was received, but before the Authority’s final position was communicated to Cell C, Cell C Paid 10% of the Auction fee in accordance with its proposed payment arrangement.</p> <p>7.8. On 10 May 2022, the Committee requested a supplementary legal opinion on the implications of the payment made by Cell C.1</p> <p>7.9. On 24 May 2022, the Committee sought a further supplementary legal opinion on whether the Authority:</p>	



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	<p>7.9.1 Can call on the guarantee provided by Cell C in the amount of R10 million (in accordance with para 16.3.10 of the ITA), considering their non-payment of the full license fees.</p> <p>7.9.2 Can request Cell C to extend the guarantee which expired on 30 April 2022 or provide a new guarantee considering that they have not yet fulfilled their obligations under the ITA.</p> <p>7.9.3 Can request Cell C to provide a new guarantee considering that they have not yet fulfilled their obligations under the ITA.</p> <p>7.10. The legal opinions in respect of the above issues can be summarised as follows:</p> <p>7.10.1 The indulgence requested by Cell C is inconsistent with the ITA;</p> <p>7.10.2 Notwithstanding, the Authority is not precluded from exercising its discretion to condone Cell C's non-compliance with the ITA if it deems it fair, reasonable, and non-prejudicial to other bidders who participated in the auction.</p> <p>7.10.3. Cell C's payment of 10% of the auction fee, although not in line with the ITA, does not automatically lapse or disqualify Cell C's bid. The payment was made as a cautionary measure in the event that the Authority agrees to the arrangement.</p> <p>7.10.4. Paragraph 18.1.6 states that "<i>Non-payment, late or incomplete payment of the auction fee may lead to the non-issuing of the license. The lot may then be auctioned at a later stage, or the authority may determine an alternative licensing process in terms of the Radio Frequency Spectrum Regulations, 2015 (as amended).</i>" Non-compliance with paragraph 18.1. 3 is thus not automatically visited with the disqualification of</p>	



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	<p>the successful bidder of the lot(s). The Authority retains the discretion to accept or reject Cell C's request.</p> <p>7.10.5. The guarantee provided by Cell C in terms of the ITA lapsed on 30 April 2022 and carries no legal validity. A request to extend the guarantee would thus not be legally competent nor lawful;</p> <p>7.10.6. The Authority may, however, request Cell C to provide a fresh guarantee and impose penalties on Cell C for failure to comply with the payment term, should the Authority accede to Cell C's request</p> <p>7.11. According to the SC:</p> <p>7.11.1 The public interest would be better served if Cell C's request is accepted, taking into consideration factors such as the need to level the playing field in the ICT sector by introducing more players and promoting competition;</p> <p>7.11.2 Accepting the request will obviate the need to restart the process of reauctioining the lots purchased by Cell C;</p> <p>7.11.3 None of the interested parties will be prejudiced by the acceptance of Cell C's request in the circumstances.</p> <p>7.12. The request, if accepted, should include strict conditions imposed by the Authority including deferring the issuing of a license to Cell C until such time that the full auction fee has been paid.</p> <p>7.13. It was recommended that Council:</p> <p>7.13.1 Note the legal opinions prepared by ██████████ SC; and</p> <p>7.13.2 Resolve whether to approve the payment arrangement proposed by Cell C.</p>	



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	<p>The decision was deferred to the next meeting of Council pending a SteerCo with Senior Counsel.</p>	
	<p>B. Second Phase - Licensing of available IMT Spectrum</p> <p>7.1. The purpose of this submission was to recommend that Council approves the consultation document on the second phase of the licensing of the available International Mobile Telecommunications (IMT) Spectrum.</p> <p>7.2. Pursuant to the licensing of the IMT spectrum litigation between the Independent Communications Authority of South Africa (“the Authority”) and Telkom, on 08 April 2022 the matter was settled out of Court.</p> <p>7.3. As part of the agreed settlement between the two parties, the Authority committed to issuing an Information Memorandum (“IM”) by no later than 30 June 2022 for the licensing of:</p> <p style="padding-left: 40px;">7.3.1 the unsold sub-1 GHz Lot from the IMT spectrum auction, and</p> <p style="padding-left: 40px;">7.3.2 any other IMT spectrum that is presently available for licensing except for the spectrum currently set aside for the Wireless Open Access Network (WOAN).</p> <p>7.4. The IM, amongst others, is to consider the spectrum holdings emanating from the recently concluded auction, including the imbalances in the sub-1 GHz spectrum and the impact of the outcome of the auction on competition in the mobile market.</p> <p>7.5. The Licensing of IMT Spectrum Council Committee (“the Committee”) formulated the consultation document in a quest to implement the terms of the agreement reached between the Authority and Telkom.</p> <p>7.6. As part of the Planning Phase of the project, the Committee assessed all other frequency bands that could be ready for immediate licensing with the assistance of the Licensing and</p>	<p>CIlr [REDACTED]</p>



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	<p>Compliance Division as well as the Engineering and Technology Division.</p> <p>7.7. Various IMT spectrum bands were assessed and then the Committee concluded that the available IMT Spectrum is the unsold Lot of IMT800 from the previous process, and the IMT2100. Other bands are not available immediately for licensing since they are still subjected to the consultation process relating to the Radio Frequency Spectrum Assignment Plans for International Mobile Telecommunications with the implementation date envisaged to start as of 1 April 2023.</p> <p>7.8. Noting the Constitutional Court judgement on the matter between e.tv and the Minister, the proportional payment will apply in an event that this process is concluded before the Analogue switch-off date.</p> <p><u>Recommendation to Council:</u></p> <p>7.9. The Committee recommended that Council approves the consultation document on the second phase of the licensing of the available IMT spectrum.</p> <p>The submission was approved.</p>	
8.	<p>Application for amendment of Radio Frequency Spectrum Licence for public sound broadcasting service: Tru FM and Umhlobo Wenene FM</p> <p>The Executive: Licensing and Compliance presented the item.</p> <p>8.1. The purpose of this submission was to advise Council of the Radio Frequency ("RF") Spectrum Licence amendment application received from the South Africa Broadcasting Corporation ("SABC") ("the Applicant") and to recommend that Council approve the amendment.</p>	<p>CEO / Exec: Licensing and Compliance</p>



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	<p>8.2. The Broadcasting Frequency Co-ordination ("BFC") Unit received an application to amend Radio Frequency Spectrum Licences from the Applicant on 13 April 2022. The Applicant is licensed to provide Public Sound Broadcasting Services within the borders of South Africa.</p> <p>8.3. The Applicant seeks to relocate Tru FM's broadcast equipment, movable assets, and personnel from Bisho to Port Elizabeth (Gqeberha). It indicated that the relocation would allow Tru FM to optimize the use of current assets while reducing costs and boosting audience growth, especially amongst the youth in the area.</p> <p>8.4. Tru FM is currently operating in the FM broadcasting band with nine (9) transmitter sites in the Eastern Cape Province whilst Umhlobo Wenene currently operates in the FM broadcasting band with sixty-four (64) transmitter sites in all nine provinces.</p> <p>8.5. The Applicant seeks to amend its RF Spectrum Licences by replacing Umhlobo Wenene FM services with Tru FM services at Parsons Hill on 91 MHz frequency in Port Elizabeth (Gqeberha).</p> <p>8.6. In its application, the Applicant asserts that Umhlobo Wenene FM's coverage area at Parsons Hill will not be compromised by the amendment as the area is also served by the Port Elizabeth transmitter.</p> <p>8.7. On 06 June 2022, the Executive and Operations Committees approved the application for tabling at Council.</p> <p>8.8. Technical analysis</p> <p>8.8.1 The coverage prediction footprint for both Tru FM and Umhlobo Wenene were simulated as per the proposed technical specifications. It was noted that the Umhlobo Wenene FM's coverage from the Port Elizabeth transmitter overlaps with that of the Parsons Hill transmitter. This means that listeners will not be</p>	



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	<p>disadvantaged or left without coverage if Umhlobo Wenene FM is replaced by Tru FM at Parsons Hill on 91 MHz.</p> <p>8.8.2 Interference analysis conducted on the proposed amendments revealed that the Applicant would not induce and be affected by harmful radio frequency interference (RFI).</p> <p>8.9. It is recommended that Council approves the Applicant's application to amend Tru FM and Umhlobo Wenene FM's Radio Frequency Spectrum Licences for the following reasons:</p> <p>8.9.1 Umhlobo Wenene FM's coverage area at the Parsons Hill transmitter overlaps with the Port Elizabeth transmitter, which means that listeners will not be disadvantaged or left without coverage;</p> <p>8.9.2 The amendment will not cause harmful Radio Frequency Interference (RFI) to existing licensees and/or spare coordinated frequencies; and</p> <p>8.9.3 The application is in line with section 30 (3)1 and section 31 (4) (d) of the Electronic Communications Act of 2005 (ECA), read with the procedures set out in Regulation 9 of the Radio Frequency Spectrum Regulations of 2015, as amended</p> <p>The submission was approved.</p>	
9.	<p>Proposed 2020/21 Performance Rewards Payment</p> <p>The Senior Manager: Talent and Performance Management presented the item.</p> <p>9.1 The purpose of this submission [REDACTED] [REDACTED] [REDACTED].</p>	<p>CEO / Executive: Human Resources</p>



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	<p>9.2 The annual performance assessment is the basis upon which [REDACTED]</p> <p>9.2.1 [REDACTED]</p> <p>9.2.2 [REDACTED] and</p> <p>9.2.3 [REDACTED].</p> <p>9.3 Notably, for this submission, the focus will be on the [REDACTED]</p> <p>9.4 The Strategic Plan 2020/21 – 2024/25 of ICASA [REDACTED]</p> <p>9.5 The Authority increased its overall [REDACTED]</p>	



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	<p>[REDACTED]</p> <p>9.6 The Authority's performance [REDACTED]</p> <p>[REDACTED]</p> <p>9.7 Council should deliberate and consider [REDACTED]</p> <p>[REDACTED]</p> <p>9.7.1 Scenario 1</p> <p>9.7.1.1 The payment of performance rewards as per the 2021 Policy is as follows:</p> <p>9.7.1.1.1 [REDACTED]</p> <p>9.7.1.1.2 [REDACTED] and [REDACTED]</p> <p>9.7.1.1.3 [REDACTED]</p> <p>9.7.1.1.4 [REDACTED]</p>	



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	<p data-bbox="363 521 600 555">9.7.2 Scenario 2</p> <p data-bbox="363 600 1262 674">9.7.2.1 The non-payment of performance rewards as per the 2021 Policy is as follows:</p> <p data-bbox="475 719 1262 792">9.7.2.1.1 [REDACTED];</p> <p data-bbox="475 837 1262 911">9.7.2.1.2 [REDACTED] and</p> <p data-bbox="475 956 1262 1030">9.7.2.1.3 [REDACTED]</p> <p data-bbox="475 1075 1262 1270">9.7.2.1.4 [REDACTED]</p> <p data-bbox="288 1314 1262 1388">9.8 The Authority has made [REDACTED]</p> <p data-bbox="264 1417 679 1451"><u>Recommendation to Council:</u></p> <p data-bbox="288 1473 1262 1592">9.9 Based on the above, the Council should consider and exercise discretion whether to pay 2020/21FY performance rewards into account inter alia the following:</p> <p data-bbox="360 1637 1262 1711">9.9.1 The [REDACTED];</p> <p data-bbox="360 1756 1262 1906">9.9.2 The fact that the [REDACTED];</p> <p data-bbox="360 1951 1262 2024">9.9.3 The budget provision made for performance rewards for 2020-21FY;</p>	



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	<p data-bbox="360 521 1262 633">9.9.4 The fact that Council [REDACTED] [REDACTED] [REDACTED]</p> <p data-bbox="360 678 1262 835">9.9.5 The [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p data-bbox="264 857 791 898"><u>The following comments were made:</u></p> <p data-bbox="280 958 1262 1077">9.10 Council expressed [REDACTED] [REDACTED] [REDACTED].</p> <p data-bbox="280 1122 1262 1272">9.11 Council expressed [REDACTED] [REDACTED] [REDACTED].</p> <p data-bbox="280 1317 1262 1507">9.12 Council resolved [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p data-bbox="280 1552 1262 1671">9.13 Council inquired [REDACTED] [REDACTED] [REDACTED]</p> <p data-bbox="280 1715 1262 1865">9.14 Management informed Council [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p data-bbox="280 1910 1262 1982">9.15 Management expressed [REDACTED] [REDACTED]</p>	



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	<p>[REDACTED]</p> <p>9.16 Council expressed that [REDACTED]</p> <p>[REDACTED]</p> <p>Council resolved to defer the decision-making of the submission, pending the results from the employees' survey being collated.</p>	
10.	<p>Proposed 2022/23 ICASA pay scales and Cost of Living Adjustment</p> <p>The Senior Manager: Talent and Performance Management presented the item.</p> <p>10.1. The purpose of this submission is to present the following items for Council's approval:</p> <p>10.1.1 [REDACTED] and</p> <p>10.1.2 [REDACTED] methodology.</p> <p>10.2. The details of the proposals are as follows:</p> <p>10.2.1 Proposal [REDACTED];</p> <p>10.2.2 The proposal [REDACTED]</p> <p>10.2.3 The proposal [REDACTED]</p> <p>10.2.4 The proposal [REDACTED];</p>	CEO / Executive Human Resources



No.	Action Item	Person Responsible
	<p>10.2.5 The proposal [REDACTED];</p> <p>10.2.6 New employees [REDACTED]</p> <p>10.2.7 No [REDACTED]</p> <p>10.3. According to Statistics of South Africa (SA Stats), [REDACTED]</p> <p>10.4. For 2022/23FY, [REDACTED]</p> <p>10.5. The Authority [REDACTED]</p> <p>10.6. The figures above, have factored in the breakdown below:</p> <p>10.6.1 COLA [REDACTED]</p> <p>10.6.2 [REDACTED]</p> <p>10.7. Cost Savings Factors:</p> <p>10.7.1 The [REDACTED]</p>	



No.	Action Item	Person Responsible
	<p>10.7.2 The [REDACTED] [REDACTED]</p> <p>10.7.3 The [REDACTED] [REDACTED] [REDACTED]</p> <p>10.7.4 The cost i [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>10.8. Based on the above, it was recommended that Council approves the proposal:</p> <p>10.8.1 to update [REDACTED] [REDACTED]</p> <p>10.8.2 for payment [REDACTED] [REDACTED] [REDACTED]</p> <p>10.8.3 for payment [REDACTED] [REDACTED] [REDACTED]</p> <p>10.8.4 for payment [REDACTED] [REDACTED]</p> <p>10.8.5 for payment [REDACTED] [REDACTED]</p> <p>10.8.6 that new [REDACTED] [REDACTED] [REDACTED] and</p>	



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	<p>10.8.7 that [REDACTED] [REDACTED] [REDACTED]</p> <p><u>The following comments were made:</u></p> <p>10.9. Council sought clarity a [REDACTED] [REDACTED]</p> <p>10.10. Management informed Council [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>10.11. Council inquired if the [REDACTED] [REDACTED].</p> <p>10.12. Management informed Council [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>10.13. Council inquired if [REDACTED] [REDACTED] [REDACTED]</p> <p>10.14. Management informed Council [REDACTED] [REDACTED] [REDACTED]</p> <p>10.15. Council expressed [REDACTED] [REDACTED] [REDACTED].</p> <p>10.16. Council resolved to approve the submission as presented. The submission was approved.</p>	



No.	Action Item	Person Responsible
11.	<p>Quarter 4 of 2021/22 update of register of Memoranda of Understanding entered into by the Independent Communications of South Africa</p> <p>The Senior Manager Legal Regulatory Support and Legislative Drafting presented the item.</p> <p>11.1. The purpose of this submission is to update Council with regards to the memoranda of understanding (“MOUs”) entered into by ICASA, including those in the process of being concluded with other entities as of Quarter 4 of the financial year 2021/22, for noting.</p> <p>11.2. In terms of section 4(3A) (b) of the Independent Communications Authority of South Africa Act 13 of 2000 (“ICASA Act”), ICASA is empowered to enter into concurrent jurisdiction agreements with other entities.</p> <p>11.3. The LRCCC, on a quarterly basis, provides updates to Council regarding new MOUs concluded with other regulatory authorities and also developments with respect to MOUs still in the process of being concluded.</p> <p>11.4. The LRCCC further advises that MOUs in effect, are uploaded by Corporate Services onto the ICASA website at https://www.icasa.org.za/pages/mous.</p> <p>11.5. The most recent updates to the MOU Register are with regards to the removal of China Branch of BRICS Institute of Future Networks, since the MoU is supposed to be concluded with the Department of Communications and Digital Technologies, and not with ICASA.</p> <p>11.6. ICASA is still in the process of concluding MOUs with the following entities:</p> <p>11.6.1 Media Development and Diversity Agency (“MDDA”); 11.6.2 Department of Defence (“DOD”); 11.6.3 Statistics South Africa (“SSA”);</p>	<p>CEO / Executive: LRCCC</p>



No.	Action Item	Person Responsible
	<p>11.6.4 Telecoms Regulatory Authority of India (“TRAI”); 11.6.5 South African Banking Risk Information Centre (“SABRIC”); 11.6.6 Information Regulator (“IR”); 11.6.7 The National Broadcasting and Telecommunications Commission of Thailand (“NBTC”); and 11.6.8 National Regulator for Compulsory Specifications (“NRCS”).</p> <p>11.7. In the next reporting cycle, which will be at the end of Quarter 1 of the 2022/23 financial year, the LRCCC Division intends to report on the MOUs, which in its view, will need to be reviewed based on the length of period they have been in effect.</p> <p><u>Recommendation to Council</u></p> <p>11.8. It was recommended that Council note the updated ICASA MOU register as of the end of Quarter 4 of 2021/22.</p> <p><u>The following comments were made:</u></p> <p>11.9. Council inquired about the status of the MOUs with the Information Regulator and SABRIC.</p> <p>11.10. Management informed Council that the relevant Division is currently in a consultative process and once it has been completed the draft MoU will be submitted to the Legal Division for further review and processing.</p> <p>The submission was noted by Council.</p>	
12.	<p>Approval of reviewed Whistle Blower Policy</p> <p>The Risk and Compliance Management Specialist presented the item.</p> <p>12.1. The purpose of this submission was to request Council for the approval of the Whistle blower policy.</p> <p>12.2. In line with the Policy and Procedure Framework of ICASA, policy owners are required to review policies in every three years. The current whistle-blower policy (“the Policy”) was</p>	<p>CEO / Executive LRCCC</p>



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	<p>approved by Council in 2018, hence the need to review the policy to ensure alignment with the current trends.</p> <p>12.3. During the review process, minor edits were done which do not affect the scope, objectives, and substance of the policy.</p> <p><u>Recommendation to Council:</u></p> <p>12.4. It was recommended that Council approve the Whistle blower policy.</p> <p><u>The following comments were made:</u></p> <p>12.5. Council requested a standard email address that would not change and also a roll account at the Department.</p> <p>12.6. Management informed Council that the email and hotline being used belongs to the service provider and further informed Council that the matter raised around the centralised email would be investigated.</p> <p>12.7. Council requested that the emails specified for whistleblowing should have a name that reads ""ICASAWhistleblower@..."" as well as the email for the department.</p> <p>12.8. Management informed Council that the input will be incorporated.</p> <p>The submission was approved.</p>	
13.	<p>Settlement terms for the Review Application in the matter between Cell C and ICASA on the Number of Portability Regulations</p> <p>The Chief Executive Officer presented the item.</p> <p>13.1 The purpose of this submission was to apprise Council of the settlement terms and recommend that Council resolves that the Authority should accept the terms and that the LRCCC Division should proceed and instruct the Attorneys of Record to attend to the conclusion of the settlement agreement.</p>	<p>CEO / Executive LRCCC</p>



No.	Action Item	Person Responsible
	<p>13.2 On 6 June 2022, the Legal, Risk, and CCC Division (the “LRCCC Division”) received correspondence from Mkhabela Huntley Attorneys (Attorneys of Record) regarding the settlement terms for the review application on the Number Portability Regulations in the matter between Cell C and ICASA Case No. 21505/19. No relief was sought from the third to the eight respondents save for costs should they oppose the application and are merely cited for any interest they may have in the matter.</p> <p>13.3 On 27 March 2019 the Authority received a review application filed by Cell C Ltd (“Cell C”) for the reviewing and setting aside of the amendment of the Number Portability Regulations (the “Regulations”) published in 2018.</p> <p>13.4 The relief sought in the review application was:</p> <p style="padding-left: 40px;">13.4.1 The reviewing and setting aside of the decision of the first respondent to promulgate the Number Portability Regulations published as Notice 1021 of 2018 in Government Gazette 41949 of 1 October 2018;</p> <p style="padding-left: 40px;">13.4.2 Ordering the first respondent to pay the costs of the application, as well as any other respondents that oppose the application, jointly and severally, the one paying the others to be absolved; and</p> <p style="padding-left: 40px;">13.4.3 Granting further and/or alternative relief.</p> <p>13.5 Subsequently, correspondence ensued between the Authority and Cell C. Cell C approached the Authority with an offer to enter into a settlement agreement in which both parties pay their own costs. This Authority did not accept this offer and counter-offered that Cell C pay the Authority’s costs. Cell C proposed a settlement of ██████████ in full and a final settlement of the Authority’s wasted costs which were incurred pursuant to the abandonment by Cell C of its application.</p>	



No.	Action Item	Person Responsible
	<p>13.6 Upon consideration of the proposed settlement terms by Cell C, the LRCCC Division then invited the Attorneys of Record to make a recommendation on whether the proposed settlement amount was reasonable.</p> <p>13.7 The Attorneys have since prepared a bill of costs to the value of R██████████ for attorney fees and R██████████ for disbursements which mainly consist of counsel's fees. Having regard that counsel's fees are often taxed significantly by the Tax Master, the Attorneys of Record are of the view that the proposed settlement of R██████████ is reasonable. They also expressed that there is no exact science to the determination of a reasonable amount but merely an approximation of what is reasonable.</p> <p>13.8 The Authority should consider agreeing to the settlement terms as it will not have any adverse financial implications and most significantly the withdrawal of the review application by Cell C bodes well as the Regulations do not stand to be reviewed and set aside, this is consistent with the Authority's regulatory mandate.</p> <p>13.9 It was recommended that Council:</p> <p style="padding-left: 40px;">13.9.1 note the settlement terms proposed by Cell C.</p> <p style="padding-left: 40px;">13.9.2 approve that a settlement agreement is entered into and that the LRCCC Division should proceed to instruct the Attorneys of Record to conclude a settlement agreement on the proposed terms.</p> <p>The submission was approved.</p>	
14.	<p>Proposed Settlement in the matter between ICASA and Primedia</p> <p>The Chief Executive Officer presented the item.</p> <p>14.1. The purpose of this submission was to apprise Council of the settlement terms and recommend that Council resolves that the Authority accept the terms proposed hereunder and that</p>	<p>CEO / Exec: LRCCC</p>



No.	Action Item	Person Responsible
	<p>the LRCCC Division proceed and instruct the Attorneys of Record to finalise the matter as per the settlement agreement.</p> <p>14.2. On 15 June 2022, the Office of the CEO, received a without prejudice settlement proposal from Primedia setting out the settlement terms of the appeal application lodged by ICASA with the Supreme Court of Appeal in the matter between Independent Communications Authority of South Africa (ICASA) and Primedia (Pty) Ltd (Primedia), Case No. 1282/2021.</p> <p>14.3. Primedia holds three individual commercial FM sound broadcasting services licences in respect of 94.7 FM, Radio 702, and K-FM, and an individual commercial AM sound broadcasting service licence in respect of Cape Talk. Primedia also holds four radio frequency spectrum licences to enable it to provide these broadcasting services.</p> <p>14.4. The Radio 702 licence was due to expire on 16 December 2018. Thus, on 13 March 2018, Primedia applied to renew the Radio 702 licence. In response to Primedia's Radio 702 licence renewal application, ICASA requested Primedia to submit an exemption application in terms of section 65(6) of the Electronic Communications Act 36 of 2005 ("ECA"), in order for ICASA to conclude the licence renewal process in respect of the Radio 702 licence.</p> <p>14.5. ICASA's reason for this decision was that the term of the exemption is linked to the term of the Radio 702 licence. Therefore, the exemption must be reconsidered when the licence comes up for renewal.</p> <p>14.6. The Judgment on the matter was delivered by the High Court of South Africa in Pretoria on 19 May 2021. The Judge placed more emphasis on the fact that the decision was already made, and that the exemption applies in perpetuity, which in ICASA's view was misdirected. Following the High Court Judgment, ICASA lodged an application for leave to appeal and the leave to appeal was dismissed. ICASA then petitioned</p>	




No.	Action Item	Person Responsible
	<p>the Supreme Court of Appeal for the Appeal, and this was granted on 03 November 2021.</p> <p>14.7. Primedia submitted to a without prejudice settlement proposal on 20 April 2022. In the settlement, Primedia proposed the following:</p> <p>14.7.1 The appellants agreed to abandon their appeal to the Supreme Court of Appeal (Appeal) in relation to the High Court judgment in this matter handed down by Tolmay J (High Court Judgment).</p> <p>14.7.2 Primedia agrees that, if the circumstances specified in clause 2.1 or clause 2.2 apply (and only if those circumstances apply), it will abandon its existing exemption and, if it still requires its exemption, reapply for it in accordance with the provisions of section 65(6) the Electronic Communications Act, 2005 (the ECA):</p> <p>14.7.2.1 If ICASA, at any time, lawfully declines to renew the Radio 702 broadcasting licence (the 'license') on the grounds specified in section 11(7) of the ECA (or a similar provision in any successor legislation); or</p> <p>14.7.2.2 If ICASA, at any time, lawfully cancels the Radio 702 licence on the grounds specified in section 14(1) of the ECA (or a similar provision in any successor legislation).</p> <p>14.7.3 The parties agree that, save in the circumstances specified in clause 2 above, there shall be no need for Primedia to make a fresh application for its exemption.</p> <p>14.8. After consideration of the legislative framework and the implication of the above proposal to ICASA as a Regulator, the proposed terms were not accepted by ICASA, and this was communicated to Primedia in a letter dated 06 May 2022.</p>	



No.	Action Item	Person Responsible
	<p>14.9. Subsequent to a response from ICASA, Primedia requested a meeting with ICASA, which was held on 15 June 2022 to discuss the terms as proposed by ICASA. The discussions between ICASA and Primedia were confirmed in writing in a form of a settlement proposal received by ICASA on 15 June 2022. The terms of the settlement proposal are as follows:</p> <p>14.9.1 Primedia will, within ten court days of this agreement being concluded, follow the administrative processes applicable to an application for an exemption in terms of section 65(6) the Electronic Communications Act, 2005 (the 'ECA') and will also do so each time it applies for the renewal of the Radio 702 broadcasting licence (the '702 licence') in the future.</p> <p>14.9.2 ICASA will consider the 702- licence renewal application and any exemption application contemplated in paragraph 1 above at the same time and will only refuse such exemption application if:</p> <p>14.9.2.1 ICASA lawfully declines to renew the 702 licence on the grounds specified in section 11(7) of the ECA (or a similar provision in any successor legislation); or</p> <p>14.9.2.2 ICASA lawfully cancels the 702 licence on the grounds specified in section 14(1) of the ECA (or a similar provision in any successor legislation).</p> <p>14.9.3 ICASA will abandon its appeal to the Supreme Court of Appeal under case number 1282/21 in relation to the High Court judgment under case number 42817/2019.</p> <p>14.9.4 All parties will bear their own costs in respect of the proceedings in the High Court and the Supreme Court of Appeal.</p>	



No.	Action Item	Person Responsible
	<p>14.10. The terms of the settlement proposal are acceptable save for the issue of costs. It is ICASA's contention that Primedia should pay ICASA's wasted costs, including the cost of two Counsels. The rationale being that Primedia approached the High Court prematurely before allowing ICASA the opportunity to make a proper decision on the matter.</p> <p>14.11. Upon consideration of the proposed settlement terms by Primedia, the LRCCC Division is for the view that the settlement should be accepted save for the cost issues as indicated above.</p> <p>14.12. It was recommended that Council:</p> <p style="padding-left: 40px;">14.12.1 notes the settlement terms proposed by Primedia.</p> <p style="padding-left: 40px;">14.12.2 approve that an amended settlement agreement be entered into between ICASA and Primedia; and</p> <p style="padding-left: 40px;">14.12.3 that the LRCCC Division should proceed to instruct the Attorneys of Record to withdraw the appeal from the Supreme Court of Appeal under Case No. 1282/2021, on the basis of the settlement agreement between ICASA and Primedia.</p> <p><u>The following comments were made:</u></p> <p>14.13. Council inquired clarity about the exemption in perpetuity and whether the understanding of the Authority corresponds with that of Primedia.</p> <p>14.14. Management informed Council that Primedia accepts that the exemption does not exist in perpetuity and further that it will have to file an application for exemption.</p> <p>The submission was approved.</p>	
15.	Independent assurance on the IMT Spectrum Auction Spectrum Assignment	CAE / 



No.	Action Item	Person Responsible
	<p>The External consultants presented the submission.</p> <p>15.1. The purpose of this submission was for Council to note the Independent assurance on the IMT Spectrum Auction Assignment.</p> <p>15.2. The service providers were:</p> <p style="padding-left: 40px;">15.1 appointed in terms of clause 17.14.1 of the ITA to oversee the auction process and to provide real-time reasonable assurance on whether there was compliance with the ITA and auction rules, including but not limited to:</p> <p style="padding-left: 80px;">15.1.1 undertaking a detailed review and observation of the Main Auction process to confirm its compliance with the ITA;</p> <p style="padding-left: 80px;">15.1.2 observation of the Main Auction process to confirm if the auction was fair and without undue bias;</p> <p style="padding-left: 80px;">15.1.3 reviewing the auction bids received from each bidder for accuracy, validity, and completeness; and</p> <p style="padding-left: 80px;">15.1.4 reviewing the auction results for accuracy, validity and completeness.</p> <p style="padding-left: 40px;">15.2 Were further requested to observe and report on the Spectrum Assignment process that was undertaken on 22 March 2022.</p> <p>15.3. The spectrum assignment was carried out and completed by the Auctioneer in the presence of all the qualified bidders (Vodacom, MTN, Telkom, Cell C, Rain and Liquid), represented by their respective Authorised Representatives.</p> <p>15.4. The selection of preferred frequency bands by bidders were all captured on camera and a report setting out all the spectrum</p>	<p>██████████</p> <p>██████████</p>



No.	Action Item	Person Responsible
	<p>assignments per band was compiled live by the Auctioneer in full view of all qualified bidders (under observation).</p> <p>15.5. In view of the observations and findings recorded in the Main Auction Checklist, it was concluded that the Spectrum Assignment was conducted in a manner that complies with the assignment processes stipulated by ICASA.</p> <p><u>Recommendation to Council</u></p> <p>15.6. The purpose of this submission was for Council to note the Independent assurance on the IMT Spectrum Auction Assignment.</p> <p><u>The following comments were made:</u></p> <p>15.7. Council inquired about the ultimate destination of the report and whether parts of the report would be made public to confirm that the Auction has been subjected to an External Audit.</p> <p>15.8. Management informed Council that the legal implications of publishing the report will be sought following which a recommendation on the publishing of the report will be made.</p> <p>The submission was noted.</p>	
16.	<p>State Of Readiness Review</p> <p>The Chief Audit Executive presented the submission.</p> <p>16.1. The purpose of the submission was for Council to note the State of Readiness Review report.</p> <p>16.2. The National Treasury (Internal Audit Support Unit) conducted a state of readiness of the Independent Communications Authority of South Africa (ICASA)'s Internal Audit Activity (IAA) to undergo an external Quality Assessment Review (QAR). The purpose of the assessment was to evaluate the IAA's extent of conformance with the definition of Internal Auditing, Code of Ethics, and International Standards for the Professional Practice</p>	CAE



No.	Action Item	Person Responsible
	<p>of Internal Auditing (Standards), covering the period from 01 April 2020 to 31 October 2021.</p> <p>16.3. The objective of this review was to provide the institution with an independent assessment of the aspects and identify opportunities and offer ideas and recommendations to enhance the value added by the IAA.</p> <p>16.4. The scope of this engagement was focused on an internal assessment and does not constitute an external review. Our approach included the following:</p> <p>16.4.1 Review the extent of compliance with the definition of Internal Auditing, Standards, and Code of Ethics;</p> <p>16.4.2 Review the extent of compliance with Section 38 of the Public Finance Management Act of 1999 (PFMA) and prevailing Treasury Regulations;</p> <p>16.4.3 Review of internal audit policies and procedures; and</p> <p>16.4.4 Interviews with stakeholders to get an overall perspective of the effectiveness of the IAA. This included assessing management and reporting internal audit activity to the audit committee, review of detailed documentation linked to IAA's structure and its impact on operations, audit approach; audit tools, methodologies, charters, etc.</p> <p><u>Conclusion</u></p> <p>16.5. Based on observations, ICASA (IAA) is at a developed level as the basics are in place; and is making good efforts to apply the Standards, core principles, definition of internal auditing including adherence to the Code of Ethics of Internal Auditors.</p> <p>16.6. Overall, the IAA "Generally Conforms" with the Standards and Code of Ethics and is considered ready for external assessment. It was recommended that the CAE develop an action plan in line with the QAIP to address issues raised, and report progress on implementation to the AREDC.</p>	



No.	Action Item	Person Responsible
	<p><u>Recommendation</u></p> <p>16.7. It was recommended that Council note the report.</p> <p>The submission was noted.</p>	
17.	<p>Annual confirmation of the Internal Audit Division's Organisational Independence</p> <p>The Chief Audit Executive presented the item.</p> <p>17.1. The purpose of the submission was to confirm the independence of the Internal Audit division throughout the 2021/2022 financial year to Council in line with the approved 2021 Internal Audit Charter.</p> <p>17.2. Paragraph 8 of the Internal Audit Charter on Independence and Objectivity provides that "The CAE will confirm to the AREDC and Council, at least annually, the organisational independence of the internal audit function". This is in keeping with Standard 1110 (Organizational Independence) of the International Standards for the Professional Practice of Internal Auditing (ISPPA).</p> <p>17.3. The following are steps and actions taken to denote the manner in which independence was ensured and attained:</p> <p>17.3.1 The CAE reported to a level within the organization that allows the Internal Audit Activity to fulfil its responsibilities, administrative reporting was to the CEO;</p> <p>17.3.2 The CAE reported functionally to the AREDC throughout the 2021/2022 Financial Year;</p> <p>17.3.3 The Internal Audit Activity was free from interference in determining the scope of internal auditing, performing work, communicating results, and carrying the related responsibilities in an unbiased manner;</p>	CAE



No.	Action Item	Person Responsible
	<p>17.3.4 The CAE had direct and unrestricted access to Senior management, CEO and Council;</p> <p>17.3.5 On several occasions, the CAE met with the chairperson of AREDC without management;</p> <p>17.3.6 No instances were noted that indicate threats or potential threats to the Division's independence.</p> <p>17.4. To this end, the Council is assured that the Division maintained its organisational independence and was under no undue pressure to perform activities beyond its mandate.</p> <p><u>Recommendation to Council:</u></p> <p>17.5. It was recommended that Council notes the submission.</p> <p>The submission was noted.</p>	
18.	<p>Progress Reports: Quarters 3 & 4</p> <p>18.1. The purpose of this submission is to apprise Council of Internal Audit's Quarter 3 & 4 progress reports detailing the performance against the approved Audit Plan.</p> <p>18.2. The reports are submitted in line with Treasury Regulations 3.2.7 (d) which provide that, "to allow effective monitoring, a quarterly report will be submitted to the AREDC detailing Internal Audit's performance against the annual Internal Audit plan".</p> <p>18.3. The actual performance was 93.3% instead of 100% with a deviation rate of 6.7%.</p> <p>18.3.1 One project (The IT Network Security Review) was approved by AREDC for deferral to the next financial year due to the unresolved previously reported issues;</p>	CAE



No.	Action Item	Person Responsible
	<p>18.3.2 Four (4) assurance reviews were concluded, three (Quarterly Financial Statements Review; Lease Management Review and General Controls Reviews) were carried over from the previous quarter;</p> <p>18.3.3 Additionally, three consulting and three ad hoc reviews were concluded, 1 being AREDC's initiative;</p> <p>18.3.4 Two assurance reviews (ASMS and Recovery Management and Consumer and Compliance Reviews) were at draft reporting stage due to previously experienced delays;</p> <p>18.4. Experienced challenges:</p> <p>18.4.1 The resignation of a key team member (Senior Internal Auditor), who was a specialist and a Chartered Accountant.</p> <p>18.5. Of the 65 previously reported control breakdowns in Quarter 3, 25 (38%) were resolved in Quarter 4.</p> <p>18.6. As of Q4 – there were 40 reported findings in total, 24 cautionary and 1 rated as high; a process to continuously track and review the same is underway.</p> <p><u>Recommendation to Council:</u></p> <p>18.7. Council was required to note the submission.</p> <p>The submission was noted by Council.</p>	
19.	<p>Internal Audit Charter</p> <p>The Chief Audit Executive presented the item.</p> <p>19.1. The purpose of the submission was for Council to note the Internal Audit Charter.</p>	CAE



No.	Action Item	Person Responsible
	<p>19.2. The following revisions were made:</p> <p>19.2.1 Under Organisational Status – An addition on a need to send a risk assessment with ad hoc requests was included;</p> <p>19.2.2 Value adding services was incorporated as an addition from Treasury from the Standards; and</p> <p>19.2.3 The procurement of expert services was included in the Charter.</p> <p><u>Recommendation to Council:</u></p> <p>19.3. Council was requested to note the Internal Audit Charter.</p> <p>The submission was noted.</p>	
<p>20.</p>	<p>Draft 2022/2023 Annual Audit Plan & Three-Year Rolling Plan</p> <p>The Chief Executive Audit presented the item.</p> <p>20.1. The purpose of the submission was for Council to note the Annual Audit Plan & Three- Year Rolling Plan.</p> <p>20.2. The development of the plan is a mandatory requirement, the risk-based approach was employed, and this was also followed by engagement with all Execs for input.</p> <p>20.3. Twenty-eight (28) planned projects spread across the various Programmes – a significant increase from the prior year, this is despite the loss of a key staff member.</p> <p>20.4. Compensating controls include the use of a panel to augment the shortage in skills and or capacity.</p>	<p>CAE</p>



No.	Action Item	Person Responsible
	<p>20.5. The plan comprises of cyclical reviews such as the reviews of Financial Statements, Performance Information, and Revenue.</p> <p>20.5.1 Furthermore, reviews on which AG relies or is a part of direct assistance (Assets Management, SCM - proactive and reactive reviews, Contract Management, Creditors, Leave Management, Employee verification, IT Network security and Governance Reviews).</p> <p>2.5.2 Compliance reviews as a result of risks that have materialized (HR Talent sourcing).</p> <p>2.5.3 Regulatory reviews – QoS and Compliance review with the license conditions.</p> <p>2.5.4 Governance – Project management, Committee reviews.</p> <p>2.5.5 Systems reviews including the ITRC request to review the server exchange.</p> <p>2.5.6 Provision has been made for consulting activities as well as Adhoc requests – management was sensitized to the need for the risk assessment.</p> <p><u>Recommendation to Council:</u></p> <p>20.6. Council was requested to note the Annual Audit Plan & Three-Year Rolling Plan.</p> <p>The submission was noted by Council.</p>	
21.	<p>Request to initiate the recruitment process for the position of Chief Executive Officer</p> <p>The Senior Manager Talent and Performance presented the item.</p>	<p>Chairperson / Exec: HR</p>



No.	Action Item	Person Responsible
	<p>21.1. The purpose of this submission was to request Council to approve the initiation of the recruitment process to fill the position of Chief Executive Officer and further nominate the shortlisting and interview committees to assist with the selection processes for this position.</p> <p>21.2. The position of Chief Executive Officer will become vacant from 17 October 2022 due to the expiry of the contract of the current incumbent. This position is important in the provision of overall direction and guidance of the Authority and attainment of ICASA's strategy, achieving full compliance with regards to ICASA's Act and other Acts and Regulations, coordinates the efforts of the Executives and works with them and the Council to develop current and long-term objectives, policies and procedures for the organisation.</p> <p>21.3. Together with the Council ensures the accomplishment of the Authority's mission and vision and the accountability of ICASA to its diverse constituents. Represents the organisation to its stakeholders, significant sectors of the South African economy, and the general public. Accordingly, ensuring that this position is always occupied is extremely important in maintaining stability and efficiency as well as maintaining a high level of responsibility and accountability within the Authority.</p> <p>21.4. Council was requested to nominate a minimum of three (3) members who will form part of the shortlisting and interview committees to assist with the screening, interviewing and identification of suitable candidates to be recommended for appointment into this position. This position is on a five-year fixed-term contract and the draft advertisement is attached.</p> <p><u>Recommendation to Council:</u></p> <p>21.5. In light of the above, Council was requested to approve the initiation of the recruitment process to fill the position of Chief</p>	



No.	Action Item	Person Responsible
	<p>Executive Officer and further nominate the shortlisting and interview committees to assist with the selection processes for this position.</p> <p><u>The following comments were made:</u></p> <p>21.6. Council recommended the following Panel be appointed:</p> <p>21.6.1 Two Councillors; 21.6.2 The Chairperson of HR & REMCO 21.6.3 Chairperson of AREDC 21.6.4 Chairperson of ITRC</p> <p>21.7. Council requested that the names of the Councillors to form part of the panel be nominated at the next meeting of Council, following the amendment of the job advertisement.</p> <p>The recommendation was deferred to the next meeting of Council.</p>	
22.	<p>Invitation to Huawei Eco-Connect at Sandton Convention Centre on 8 July 2022</p> <p>The item was noted.</p>	Cllr Zimri
23.	<p>Closure</p> <p>The Chairperson thanked all who were present at the meeting and declared the meeting adjourned at 13:28 pm.</p>	Council

Signed: _____

Dr Charley Lewis
(Acting Chairperson)

Date: 2023-03-16 _____