



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY MEETING OF COUNCIL		
Date	07 November 2023	
Time:	09:00am	
Venue:	Virtual – Microsoft Teams	
Present	██████████	Acting Chairperson
	██████████	Councillor
	██████████	Councillor
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	██████████	Councillor
	██████████████████	Councillor
	██████████████████	Councillor
	██████████	Councillor
By Invitation	██████████████████	CEO
	██████████████	Acting CFO / Executive: PRA
	██████████	Acting CAE
	██████████	Executive: LCCC
	██████████████	Corporate Secretary
	██████████████	Secretariat Officer
	██████████████	Secretariat Officer
	██████████	Graduate Council
Partial Attendees	██████████	Acting Executive: Licensing.& Compliance
	██████████████	Executive: Human Resources
	██████████	Manager: Comms & Reputational Management
	██████████	Specialist: Legislative and Regulatory Drafting
	██████████████████	Manager: Broadcasting Frequency Coordination
	██████████████	Manager Service Broadcasting
	██████████████	Manager: Wholesale Services
	██████████	Senior Manager: Legal (Regulatory Support & Legislative Drafting)
	██████████████	Regulation & Legislative Drafting Specialist

	██████████	Manager Customer Complaints
	██████████	CAP Chairperson
	██████████	CAP Member
	██████████	CAP Member
	██████████	CAP Member
Apologies	██████████	Executive: Licensing.& Compliance

No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>1.1. The Chairperson declared the meeting open at 09:00 and welcomed all present.</p> <p>1.2. The Executive: Licensing.& Compliance was attending training, ██████████ attended on her behalf.</p> <p>The opening and apology were noted.</p>	Acting Chairperson
2.	<p>Ratification of agenda</p> <p>2.1. Item 14.2 - High level update on the ECA and RICA amendments was added to the agenda.</p> <p>2.2. Item 5 (Matters Arising) was deferred to the next Council meeting.</p> <p>The agenda was ratified with the above amendments.</p>	Council
3.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
4.	Adoption of Minutes of Council	
4.1.	<p>Minutes of Council: 15 September 2023</p> <p>The minutes were approved as presented.</p>	Council
4.2.	Minutes of Council: 24 October 2023	Council

No.	Action Item	Person Responsible
	The minutes were approved as presented.	
4.3.	Minutes of Council: 31 October 2023 The minutes were deferred to the next Council meeting.	
5.	Matters Arising The submission was deferred to the next Council meeting.	CEO
6.	International Engagements (“Standing Item”) The CEO informed Council that the Authority will be hosting the Ethiopian Regulator next week, for a benchmarking study. <u>Comments made:</u> 6.1. Councillor [REDACTED] informed Council that the Ethiopian delegation were already at the Authority today (31 October 2023). The delegation was welcomed by Councillor [REDACTED] on the 30 th of October 2023. 6.2. Council highlighted that it had not received any email relating to the visit of the Ethiopian delegation. 6.3. Council expressed its [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] Council was informed that as a result of the change of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] visited the Authority.	CEO / Executive: Corporate Services

No.	Action Item	Person Responsible
	<p>6.4. Council indicated that a resolution is needed to have a standard procedure used when urgent request visits are made to the Authority.</p> <p>6.5. Council was informed that the majority of benchmark requests, are directed to officials who are subject experts on the study.</p> <p><u>Resolutions by Council:</u></p> <p>6.6. Council resolved that it should be apprised when different delegations are coming to the ICASA offices for benchmark studies.</p>	
7.	<p>Litigation Update (“Standing Item”)</p> <p>The CEO advised that there was no update under this item.</p>	CEO / Executive: LRCCC
8.	<p>Licensing of IMT (“Standing Item”)</p> <p>Councillor █████ and the Manager Service Broadcasting presented the submission:</p> <p><u>Social Obligations</u></p> <p>8.1. The purpose of the submission dated 18 October 2023 was to recommend that the Council approve the amended Radio Frequency Spectrum Licences of the licensees assigned the spectrum resources identified for International Mobile Telecommunications (IMT) services.</p> <p><u>Recommendation to Council:</u></p> <p>8.2. The Committee recommended that Council:</p> <p>8.2.1. Approves the amended Radio Frequency Spectrum Licences of Liquid Telecoms, MTN, Rain, Telkom, and Vodacom;</p> <p>8.2.2. Approves the letter to the Minister regarding the outstanding data;</p>	Cllr █████

No.	Action Item	Person Responsible
	<p>8.2.3. Notes that the Committee has handed over zero rating obligation for implementation to Regions and Licensing and Compliance Divisions, and the Divisions will publish the notice for inviting applications; and</p> <p>8.2.4. Notes that the Committee has completed a consultation on the Social Obligations and approves the handover to the Licensing and Compliance Division to oversee the implementation and compliance monitoring thereof.</p> <p><u>Comments made:</u></p> <p>8.3. Council sought clarity on how the Committee would manage the matter of the unusable data, and inquired if the DCDT had been informed of this issue. Council was informed that officials from DCDT indicated that they had received the data from COGTA and some data was unusable. The Committee will allocate obligations according to the current data they have. Council raised its concerns regarding allocating PSIs, based on data that is not complete.</p> <p>8.4. Council noted that the issue of licensees swapping PSIs that are outside their coverage areas was a different direction to what was proposed before. The Committee reiterated that the decision of Council was not to allow swapping, but after some discussions the Committee proposed for the decision to be reconsidered if there are sound grounds.</p> <p>8.5. The gazette duplicates these formulas. The above will create a problem in future should the Committee need to amend the formulas in the individual licenses. Council was informed that the notice was mainly used to notify PBOs on the application process. The licenses will mainly compel the licensees to the social obligations.</p>	

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	<p>8.6. Council expressed that it was unclear how the user experience would be like, as there are no user protection provisions.</p> <p>8.7. Council sought clarity on whether it was mandatory for applicants to be locally hosted/registered, or if it was optional. Council was informed that the application form requires the applicant to indicate where their connection is hosted i.e. cloud or locally. The application form also has a disclaimer that only South African domain names will be zero rated.</p> <p>8.8. Council sought clarity on what is an embedded link. Council was informed that an embedded link is when a user connects to a site, and another content link appears on the screen.</p> <p>8.9. Council sought clarity on who will maintain the list of the zero-rated websites. Furthermore, how will users know which websites are zero-rated, and if there will be a code of conduct. Council was informed that the matter of informing users of which websites are zero-rated, and if the matters of a code of conduct were not considered. Council was further informed that the format of the form was developed with the licensees, additional information will be attained from them.</p> <p>8.10. Council sought clarity on whether a structure that will facilitate/monitor the rollout of the connectivity to schools will be established. Council was informed that ICASA officials in collaboration with colleagues from relevant departments will create a structure to monitor the rollout.</p> <p>8.11. Council requested for the Committee to do editorial spell check on the documents.</p> <p><u>Resolutions by Council:</u></p> <p>8.12. Council resolved that Councillor Lewis will send editorial inputs to the Committee.</p>	

No.	Action Item	Person Responsible
	<p>8.13. Council resolved to approve the submission. In a meeting with the DCDT Minister. the Authority highlighted that the data received before the deadline will be considered as complete and final.</p> <p>The submission was approved, subject to the implementation of the inputs made.</p>	
9.	<p>Draft Notice of an Inquiry on the Electricity Crisis</p> <p>Councillor [REDACTED] and [REDACTED], and the Manager Customer Complaints presented the submission:</p> <p>9.1. The purpose of the submission dated 25 October 2023 was to request Council to approve the draft notice of Inquiry on Electricity Crisis.</p> <p><u>Recommendation to Council:</u></p> <p>9.2. It was recommended that Council approves the Inquiry notice for publication in the Government Gazette for comments by interested stakeholders.</p> <p><u>Comments made:</u></p> <p>9.3. Council indicated that question one (1) and two (2) on the questionnaire are similar. Some of the questions are pre-emptive (i.e. questions 3.3) and repetitive. Council was informed that the Committee will consider looking into refining the questions.</p> <p>9.4. Council sought clarity in terms of the time it will take to finalise the work of the Committee. Council was informed that after consulting with legal, the Committee was given the go ahead to have an expedited inquiry, given the urgency of the subject matter. The Committee envisage to complete the inquiry by 2024.</p> <p><u>Resolutions by Council:</u></p> <p>9.5. Council resolved to approve the submission.</p> <p>The submission was approved, subject to the refinement of the questionnaire.</p>	Cllr [REDACTED]

No.	Action Item	Person Responsible
10.	<p>CAP Quarter Two Report for the 2023/2024 FY</p> <p>Councillor [REDACTED] CAP Chairperson and CAP members presented the submission:</p> <p>10.1. The purpose of the submission dated 09 October 2023 was to submit quarter two report (July - September 2023) of the [REDACTED].</p> <p><u>Recommendation to Council:</u></p> <p>10.2. It was recommended that Council approves CAP Quarter Two Report for the 2023/2024 financial year.</p> <p><u>Comments made:</u></p> <p>10.3. Council sought clarity [REDACTED] for implementation.</p> <p>10.4. Council recommended for [REDACTED] by the Authority.</p> <p>10.5. Council concurred [REDACTED]</p> <p>10.6. Council indicated that the recommendation for the Authority to collaborate with academic institutions needs to be considered with the understanding</p>	Cllr [REDACTED]

No.	Action Item	Person Responsible
	<p>that the services will not be for free. An MOU will have to be developed in order to agree on the fees.</p> <p>10.7. Council expressed that the recommendation for the Authority to have a toll-free complaint line for consumer complaints was excellent. However, it will need to be highlighted to consumers that they should not bring their complaints to the Authority in the first instance, they must first lodge their complaints with the service provider. Should they not receive satisfaction from the service provider, then they need to come to the Authority.</p> <p>10.8. Council indicated that the issue raised in regard to the induction of CAP members is critical in ensuring alignment of the work done by CAP and the work of the Authority.</p> <p>10.9. Council indicated that the recommendation in respect to the handset devices for people living with disabilities falls under mandate of universal service and access fund which is meant to provide assistance to needy persons.</p> <p><u>Resolutions by Council:</u></p> <p>10.10. Council acknowledged the work done by CAP on the reports, the work that needs to be done in ensuring that the recommendations are implemented, and further suggested that another session could be scheduled before the complete end of term of the CAP members.</p> <p>10.11. Council resolved to approve the submission.</p> <p>The submission was approved.</p>	
11.	<p>Term of Office of Complaints and Compliance Committee (CCC) Members</p> <p>Councillor █████ chaired the tabling of this submission.</p>	CEO/Executive: HR

No.	Action Item	Person Responsible
	<p>The CEO presented the submission:</p> <p>11.1. The purpose of the submission dated 30 October 2023 was to request Council to:</p> <p style="padding-left: 40px;">11.1.1. Renew the term of office of 4 (four) CCC members ending on 31 December 2023; and</p> <p style="padding-left: 40px;">11.1.2. Commence with the process of recruitment of 1 (one) CCC member whose second term also ends on 31 December 2023.</p> <p><u>Recommendation to Council:</u></p> <p>11.2. It was recommended that Council approves: -</p> <p style="padding-left: 40px;">11.2.1. Renewal of the term of office of 4 (four) CCC members; and</p> <p style="padding-left: 40px;">11.2.2. The commencement of the recruitment process for 1 (one) CCC member.</p> <p><u>Comments made:</u></p> <p>11.3. Council sought clarity on whether section 17 (A) of the ICASA Act allows for an automatic renewal of CCC members, or whether the Authority has the option to advertise for all four (4) positions. Council was informed the Act provides that Council does have the option, to renew the term of office of CCC members at the end of the term. The renewal is not automatic.</p> <p>11.4. Council sought clarity on whether the performance of CCC members is reviewed/assessed. Council was informed ICASA Act does not provide for such an assessment. The terms of contract of the CCC members does not provide for a performance review. However the ICASA Act (section 17(10)) does provide that the CCC must submit a report to Council, if and when required.</p>	

No.	Action Item	Person Responsible
	<p>11.5. Council sought clarity [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>11.6. Council sought clarity on whether HR processes allow for the outgoing member to remain, until a handover process with the incoming member has taken place. Further, what payment arrangements are available in such an instance. Council was informed that there is no provision that allows for the contract extension of CCC member at the end of their second term.</p> <p><u>Resolutions by Council:</u></p> <p>11.7. Council resolved that letters be sent to the four (4) members who are on their 1st term, notifying them of a 2nd term in office. The letter will outline the relevant provisions of the ICASA Act, and further provide them with the option to accept or decline the office.</p> <p>11.8. Council resolved to approve the submission.</p> <p>The submission was approved, subject to the formulation of the letters.</p>	
12.	<p>Legal opinion on the spectrum awarded to Cell C.</p> <p>The Regulation & Legislative Drafting Specialist presented the submission:</p> <p>12.1. The purpose of the submission dated 25 October 2023 was to present to Council a legal opinion prepared by [REDACTED] (“Senior Counsel”) on the award of radio frequency spectrum to Cell C (Pty) Ltd (“Cell C”).</p> <p><u>Recommendation to Council:</u></p> <p>12.2. It was recommended that Council considers the legal opinion, and takes a decision on sending the response letter to Cell C.</p>	CEO / Executive: LCCC

No.	Action Item	Person Responsible
	<p><u>Comments made:</u></p> <p>12.3. Council sought clarity on whether the amount paid by Cell C was still in the account of the Authority.</p> <p>12.4. Council requested to be sent the legal opinion.</p> <p>12.5. Council recommended that the matter of Cell C be separated into two parts. The first part being the request for a payment plan on the spectrum, to which the legal opinion is clear that the request be rejected. The second part being ascertaining the actual amount which was paid by Cell C.</p> <p>12.6. Council indicated that draft letter to Cell C, required copy editing for spell checks and grammar.</p> <p><u>Resolutions by Council:</u></p> <p>12.7. Council indicated that at some point it will need to strategize on the decision, should Cell C request the amount it paid for the spectrum back. Council also need to be apprised on the actual amount which Cell C paid.</p> <p>12.8. Council resolved to approve the submission.</p> <p>The submission was approved.</p>	
13.	<p>Possible Infringement of ICASA's Name</p> <p>The Executive: LCCC presented the submission:</p> <p>13.1. The purpose of the submission dated 26 October 2023 was for Council to approve the following:</p> <p>13.1.1. Engagement of Mozambique Regulator, Government through Diplomatic Channels to challenge the use of ICASA's name by a Company in Mozambique;</p> <p>13.1.2. Objection with the Companies Registrar?? and (CIPC) against the</p>	CEO/Executive: LCCC

No.	Action Item	Person Responsible
	<p>reservation of the name “ICASasePush” and where necessary application for an Interdict against the use of the name “ICASasePush; and</p> <p>13.1.3. Approval that ICASA registers a Trademark on the Name “ICASA” and its Logo.</p> <p><u>Recommendation to Council:</u></p> <p>13.2. It was recommended that Council approves:</p> <p>13.2.1. Engagement of Mozambique Regulator, Government through Diplomatic Channels to challenge the use of ICASA’s name by a Company in Mozambique;</p> <p>13.2.2. that LRCCC briefs the Attorneys on the Panel to file an objection with the Companies and (CIPC), against the reservation of the name “ICASasePush” and where necessary application for an Interdict against the use of the name “ICASasePush”; and</p> <p>13.2.3. that LRCCC brief the Attorneys on the Panel to register a Trademark on the Name “ICASA” and the Logo in terms of the Trademark Act.</p> <p><u>Comments made:</u></p> <p>13.3. Council indicated that the Minister and the Authority’s Mozambiquan counterpart will need to be notified of the matter. The legal division will consider this approach.</p> <p>13.4. Council highlighted that the website is a .com website, so it's not registered in Mozambique, it's registered in the United States.</p>	

No.	Action Item	Person Responsible
	<p>13.5. Council indicated that previously it had requested a report on how equipment which is not type approved come into the country. Management noted the request.</p> <p><u>Resolutions by Council:</u></p> <p>13.6. Council resolved that the draft letter was too high level, certain background information was not included. Council requested that the letter highlight some of the background information on the matter.</p> <p>13.7. Council resolved to approve the submission, subject to the amending of the letter.</p> <p>The submission was approved.</p>	
14.	General	
14.1.	<p>Invitation to the International Anti-Corruption Day Commemoration</p> <ul style="list-style-type: none"> • Council resolved that Councillors will be reminded of the event closer to the date (09 December 2023). 	Acting Chairperson
14.2.	<p>High level update on the ECA and RICA amendments</p> <ul style="list-style-type: none"> • The CEO informed Council that a submission will be tabled to Council on the matter. • Executive: LCCC informed Council a team of the different divisions is currently, an identification in terms of the areas both in the ECA Act and the ICASA Act that require amendments. • Council highlighted that it was previously stated by Management that Council Committees will be provided with an opportunity to identify gaps in the two Acts. Executive LCCC informed Council that this has not been done but it will be done before the end of the week. • CEO indicated that the Authority has not received any feedback from DCDT on RICA amendments. 	Cllr [REDACTED]

No.	Action Item	Person Responsible
	Executive LCCC indicated that the legal division will submit comments on the RICA amendments for Council consideration.	
15.	<p>Closure</p> <p>The Acting Chairperson thanked all who were present at the meeting and declared the meeting adjourned at 13h39.</p>	Council

Signed:  _____

(Acting Chairperson)

Date: 12-12-2023 _____