



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY COUNCIL MEETING		
Date	09 November 2021	
Time:	10:15	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
	[REDACTED]	Councillor
By Invitation	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	Executive: PRA
	[REDACTED]	Executive: HR
	[REDACTED]	Acting Executive: LRCCC
	[REDACTED]	Executive: Licencing and Compliance
	[REDACTED]	Manager: Broadcasting Frequency Specialist
	[REDACTED]	CCC Assessor
	[REDACTED]	Radio Frequency Specialist
	[REDACTED]	External Legal Counsel (Senior Counsel)
	[REDACTED]	External Legal Counsel
	[REDACTED]	External Legal Counsel
	[REDACTED]	Acting Executive: Engineering and Technology
	[REDACTED]	Specialist: Litigation, Contracts & General Legal Support



Apologies		

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>Apologies</p> <p>1.2. Cllr [REDACTED] was having difficulties with connectivity.</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>The agenda was ratified without any amendments.</p>	All
4.	<p>Minutes of Council: 05 October 2021</p> <p>The minutes were deferred to the next meeting of Council.</p>	Council
5.	<p>Matters Arising</p> <p>The Matters Arising document was deferred to the next meeting of Council.</p>	CEO
6.	<p>International Engagements</p> <p>There was no update on International Engagements, but a report will be collated on the previous meetings attended, and same will be for Council to note.</p>	CEO



No.	Action Item	Person Responsible
7.	<p>Licensing of IMT (“Standing Item”)</p> <p>7.1. The purpose of the submission was to give Council an update on the current status of the licensing of IMT in line with the published timetable.</p> <p>7.2. The submissions on the first Information Memorandum (“IM”) have been received by the Authority and the deadline was extended to the 3rd of November 2021. The Committee is currently busy with the analysis of the submissions that were received before the cut-off time.</p> <p>7.3. Based on the above a document will be submitted to Council for approval. The second IM will be published on 15 November 2021, in line with the timetable.</p> <p>7.4. The second IM will be submitted to Council later in the current week to allow for the publishing of the second IM on the 15th November 2021.</p> <p><u>The following comments were made by Council:</u></p> <p>7.5. Council cautioned that the Committee should ensure that the timelines are adhered to.</p> <p>7.6. Council requested confirmation of the received submissions with regards to the first IM.</p> <p>7.7. The Committee informed Council that ten (10) submissions were received before the deadline and nine (9) were received after the deadline.</p> <p>7.8. Management inquired if the Committee looked into the reasons for the late submissions, as it consists of stakeholders who are usually on time.</p> <p>7.9. The Committee informed Council that the deadline was changed to cater for the Elections date, and it was duly announced in the workshop and the Government Gazette. The stakeholders who submitted late claimed that they missed the</p>	<p>Cllr [REDACTED] / Manager: Broadcasting Frequency Specialist</p>

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	<p>Government Gazette. The mid-day deadline was also a contributing factor, as stakeholders claimed that they were thrown out by that fact. A letter was received from Cell C indicating that that they had missed the mid-day deadline.</p> <p>7.10. Council concluded that unless the problem with the late submission was on the part of the Authority, through the server and emails being down, there is nothing that can be done to assist stakeholders who submitted late. Council expressed that since most of the entities attended the workshop, they should have ensured adherence to time.</p> <p>The submission was noted by Council.</p>	
8.	<p>Amendment of Council Resolution for the Fifth Generation 5G Council Committee</p> <p>The CEO presented the item.</p> <p>The purpose of this submission was to request Council to approve the amendment of the Council resolution of the Fifth Generation (5G) Council Committee.</p> <p>8.1. In 2017, Council established the Fifth Generation (5G) Council Committee (“the 5G Committee / the Committe”) in terms of section 17 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) (“ICASA Act”).</p> <p>8.2. Ms. [REDACTED] the project leader of the 5G Committee has recently resigned from the Authority. Therefore, there is a need to replace Ms Somdyala in the 5G Committee to ensure the smooth operation of the 5G Committee in delivering on its mandate and the Engineering and Technology Division’s Annual Performance Plan targets.</p> <p>8.3. The proposed amendments to the Committee are as follows:</p> <p>8.3.1 Ms. [REDACTED] replaces Ms [REDACTED] [REDACTED] as Project Leader; and</p>	<p>CEO / Acting Executive: E&T</p>

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	<p>8.3.2 Ms [REDACTED] replace Ms [REDACTED] as the Project Manager.</p> <p><u>Recommendation to Council</u></p> <p>8.4. It was recommended that Council approves the amendment of the current resolution of the 5G Committee.</p> <p><u>The following comments were made:</u></p> <p>8.5. Council inquired if the Authority conducts exit interviews for senior personnel when they leave the Authority. Council was of the opinion that the exit interviews would explain the reasons for leaving the employment of the Authority and further provide suggestions for improvement on the part of the Authority as an employer.</p> <p>8.6. Management informed Council that exist interviews are conducted, but the interviews are not mandatory, and it is up to the employee to decide if they wish to take part in such an interview.</p> <p>The submission was approved by Council.</p>	
9.	<p>Received applications in respect of the Invitation to Pre-Register for Digital Terrestrial Television Community Television Broadcasting Service (“DTT CTBS”) and Radio Frequency Spectrum Licences</p> <p>The submission was presented by the Chairperson of the DTT CTBS Committee.</p> <p>9.1. The purpose of this submission was to advise Council of the applications received in response to the Invitation to Apply for Pre-Registration (“ITP-R”) for Digital Terrestrial Television Community Television Broadcasting Service (DTT CTBS) and Radio Frequency Spectrum (RFS) licences and to recommend that Council approves the recommendations by the DTT CTBS Committee (the “Committee”).</p>	Cllr [REDACTED]



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	<p>9.2. On 12 March 2020, the Authority published an ITP-R for DTT CTBS and RFS licences. The closing date for the submission of applications was on 15 January 2021.</p> <p>9.3. By the closing date of 15 January 2021, the Authority had received forty-two (42) applications.</p> <p>9.4. Of the forty-two (42) applications received and assessed, no application has complied with the procedural aspects of the ITP-R and are therefore not eligible to proceed to Phase 2 of the licensing process.</p> <p>9.5. All forty-two (42) applications have been disqualified from proceeding to Phase 2 of the licensing process due to non-compliance. In terms of the Committee's assessment, these applications have failed to comply with the procedural aspects as contained in the ITP-R. The defects include one or a combination of the following:</p> <p>9.5.1 no submission of tax clearance certificate;</p> <p>9.5.2 NPO not registered/ or not in existence for 2 years at the time of application as provided for in the ITP-R;</p> <p>9.5.3 no declaration of interest submitted;</p> <p>9.5.4 Form B not completed/submitted as required;</p> <p>9.5.5 Schedule I (RFS application) not completed/submitted as required;</p> <p>9.5.6 need support and demand not demonstrated;</p> <p>9.5.7 51% quorum for AGM's not complied with;</p> <p>9.5.8 No membership and appeal mechanism provision in case membership is rejected;</p> <p>9.5.9 no founding documents; and no letter of support from signal distributor.</p>	

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	<p><u>Recommendation to Council</u></p> <p>9.6. It was recommended that:</p> <p>9.6.1 Council approves the recommendation by the Committee to reject the Applications and for the decision letters to be sent out to the Applicants; and</p> <p>9.6.2 That the licensing process be re-opened in the 2022/23 financial year.</p> <p><u>The following comments were made:</u></p> <p>9.7. Council requested with regards to the technical analysis report, that the five stations which scored 20/20 and which were indicated to be compliant be verified. Council raised this on the basis that the submission before it, was recommending that Council rejects the applications, and it is a contradiction to the report.</p> <p>9.8. Council requested that the Authority become more rigorous with how it conducts information workshops for potential applicants in the next round, to ensure that all the necessary boxes are ticked.</p> <p>9.9. Council further requested that there be a formal structured research to identify what the problems are, as this situation has yielded the same results as the Community radio stations process. The research would identify the problems and make way for bringing about solutions.</p> <p>9.10. Council resolved that, having noted the challenges that faced the broadcasting applications both on Community Radio and Community TV, the Authority will be initiating a two (2) public consultation to get a view. The outcome will be included in the study and the study will take place between January and February 2022.</p> <p>9.11. Council resolved that the submission be deferred to 23 November 2021 to include the inputs of Council, and all the accompanying documents that Council has spoken to.</p>	

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No.	Action Item	Person Responsible
	<p>The submission was deferred to the next meeting.</p>	
<p>10.</p>	<p>2021 Draft Amendment Regulations and explanatory memo on the 2010 Regulations governing aspects of the procedures of the Complaints and Compliance Committee of the Independent Communications Authority of South Africa</p> <p>The CCC Assessor presented the item.</p> <p>10.1. The purpose of this submission was to request Council to approve the vetted 2021 Draft Amendment Regulations and Explanatory Memo on the CCC Regulations for publication in the Government Gazette for public comments.</p> <p>10.2. Section 4 of the ECA is read together with sections 4(3)(j) and 17C (5) of the Independent Communications Authority of South Africa Act 13 of 2000 ("ICASA Act"), to make regulations that, inter alia, prescribe procedures for the handling of urgent complaints and non-compliance matters.</p> <p>10.3. The Authority promulgated the CCC Regulations, published on 6 October 2010. The CCC Regulations, are aimed at providing details of the procedures to be followed when the CCC executes its mandate in accordance with section 17B of the ICASA Act which is to investigate, to hear if appropriate and make findings on:</p> <p>(i) all matters referred to it by the Authority; (ii) complaints received by it; and (iii) allegations of non-compliance with this Act or the underlying statutes received by it.</p> <p>10.4. On 18 August 2021, the Authority established a Committee of Council ("the Committee") to review and amend the CCC Regulations. In accordance with the Authority's Annual Performance Plan (APP) for 2021/22, the Amended CCC Regulations must be approved by Council in the 2021/22 Financial Year.</p> <p>10.5. The rationale of reviewing the CCC Regulations, apart from outlining the procedure to be followed when lodging a</p>	<p>Cllr [REDACTED] / CCC Assessor</p>



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	<p>complaint with the CCC, is to determine whether the provisions of the CCC Regulations are still relevant in their current form since their promulgation in 2010.</p> <p>10.6. Upon deliberating the proposals and preparing the Draft Regulations and Explanatory Memo, the Committee considered the abovementioned legal opinion relating to the appointment of an alternate Chairperson or deputy Chairperson where the Chairperson is unable to preside.</p> <p>10.7. The Committee noted the legal opinion's advice that regulation 7(3) is "vague and open-ended", and reliance cannot be placed on the CCC Regulations in this regard. The rationale furnished was that section 17A of the ICASA Act is clear on the appointment of the CCC Chairperson and that the Authority is not authorised to appoint a deputy Chairperson in his/her absence. In essence, the legal opinion proposes that regulation 7(3) be removed/deleted from the CCC Regulations.</p> <p>10.8. On 20 September 2021, the Committee deliberated on the merits of the legal opinion and proposed the following amendments:</p> <p>10.8.1 The CCC Regulations is entitled to canvass the procedure when the Chairperson is absent.</p> <p>10.8.2 The Committee made the following short-term proposal by amending regulation 7(3) as follows:</p> <p><i>"Where the chairperson is unable to preside, the Council appoints a duly qualified person as contemplated in terms of section 17A (2), who may also be one of the members of the CCC, to chair the hearing or meeting and any hearings or meetings which follow upon it."</i></p> <p>10.8.3 The long-term proposal suggested by the Committee is for the Authority to consider appointing an alternate Chairperson who shall have the same qualifications as contemplated in terms of section 17A (2). The</p>	

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	<p>alternate Chairperson will be called on as and when the need arises.</p> <p>10.8.4 The Committee also raised concerns regarding the practical implications of omitting to have a procedure in the CCC Regulations in an instance where the Chairperson is unable to preside over the CCC Hearings. For example, in the case of the Chairperson experiencing a prolonged emergency, then the CCC's work cannot draw to a halt.</p> <p><u>Recommendation to Council</u></p> <p>10.9. It was recommended that Council approves the vetted Draft Amendment Regulations and Explanatory Memo, for publication in the Government Gazette for public comments.</p> <p><u>The following comments were made:</u></p> <p>10.10. Council inquired on how it was to reconcile the submission on the Amendment Regulations with the legal opinion.</p> <p>10.11. The Committee informed Council that a legal opinion was sought, to advise if the Committee could have a Deputy Chairperson who would be able to stand in a presiding officer in the instances where the Chairperson was unable to preside over a CCC hearing. The legal opinion advised that the Committee remove the sub-regulation in the Regulations that speaks to the alternate Chairperson being appointed by Council. The recommendation from the Legal Division was that the Committee keep the sub-regulation as is but, ensure that the Deputy Chairperson appointed with the same requirements as in Section 17A of the Regulations.</p> <p>10.12. Council inquired about the consultation process, and further requested a brief of the steps which are to follow an approval by Council.</p> <p>10.13. Council expressed that the position of the external legal opinion was unequivocally clear that Section 17A does not provide for the position of a Deputy Chairperson, and therefore that any regulations that provide for that position are <i>ultra vires</i>. Council expressed concern that the new</p>	



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	<p>regulations will be <i>ultra vires</i> with regards to the expect of the Deputy Chairperson.</p> <p>10.14. The Committee informed Council that it shares the same concerns as Council regarding Section 17A. The Committee relayed to Council that it could follow the instructions of the external legal opinion which would be to remove the Regulation 7(3) in its entirety.</p> <p>10.15. The Committee requested that the submission be taken back to the Committee sitting, for the Committee to deliberate further.</p> <p>10.16. Council resolved that the submission be taken back to the Committee level and that the deliberations should include the concerns raised by Council.</p> <p>The submission was sent back to the Committee level.</p>	
11.	<p>Notice regarding the National Radio Frequency Plan 2021</p> <p>The Deputy Chairperson of the Committee presented the item.</p> <p>11.1. The purpose of this submission was to request Council to:</p> <p>11.1.1 Note the letter from Honourable Minister regarding the development of the National Radio Frequency Plan;</p> <p>11.1.2 Approve the notice regarding the National Radio Frequency Plan 2021;</p> <p>11.1.3 Approve the letter to honourable Minister regarding the National Radio Frequency Plan 2021; and</p> <p>11.1.4 Approve the publication of the National Radio Frequency Plan 2021, upon approval by the Minister, in the Government Gazette and on the Authority's Website.</p> <p>11.2. The Authority's Annual Performance Plan 2020/2021 output expectation is the update to the National Radio Frequency Plan considered by Council by the end of the fourth quarter.</p>	Cllr [REDACTED]



No.	Action Item	Person Responsible
	<p>11.3. The Draft National Radio Frequency Plan 2021 (NRFP-21) was published in Government Gazette Number 44803 (Notice 403 of 2021), on 9 July 2021. Thirty-Five (35) written representations were received by the closing date of 27 August 2021.</p> <p>11.4. Twenty-Six (26) stakeholder made oral presentations at the Public Hearings held from 07 to 09 September 2021. Eight (8) Supplementary written representations by stakeholders who participated in the Public Hearings. All written and oral representations obtained from stakeholders were taken into consideration developing the final draft NRFP 2021.</p> <p><u>Recommendation to Council</u></p> <p>11.5. It was recommended that Council:</p> <p style="padding-left: 40px;">11.5.1 Note the letter from honourable Minister regarding the development of the National Radio Frequency Plan;</p> <p style="padding-left: 40px;">11.5.2 Approve the notice regarding the National Radio Frequency Plan 2021;</p> <p style="padding-left: 40px;">11.5.3 Approve the letter to honourable Minister regarding the National Radio Frequency Plan 2021; and</p> <p style="padding-left: 40px;">11.5.4 Approve the publication of the National Radio Frequency Plan 2021, upon approval by the Minister, in the Government Gazette and on the Authority's Website.</p> <p><u>The following comments were made:</u></p> <p>11.6. Council inquired whether the Committee was satisfied that it had verified the whole process with a fine comb?</p> <p>11.7. The Committee informed Council that it was satisfied with the thorough process it had undertaken and further that there is an ITU radio regulations tools that was used to compare all</p>	

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No.	Action Item	Person Responsible
	<p>the allocations, and all the footnotes from previous years to date.</p> <p>The submission was approved by Council.</p>	
12.	<p>Contract extension for Human Resources and Remuneration Committee (“HR & RemCo”)</p> <p>The Executive: Human Resources presented the item.</p> <p>12.1. The purpose of this submission was to request approval for contract extension of HR & RemCo members effective from the 01st of December 2021 until the 31st of January 2022 for:</p> <p>12.1.1 [REDACTED] – Chairperson;</p> <p>12.1.2 [REDACTED], and</p> <p>12.1.3 [REDACTED].</p> <p>12.2. The HR & RemCo members were appointed for a period of three (3) years commencing 01 December 2018 ending on the 30 November 2021.</p> <p>12.3. The HR & RemCo vacancies were advertised in September 2021, to which applicants applied for this position. The pre-screening process was undertaken by the Talent Sourcing team and the pre-screen list was shared with the selection and interview panel members.</p> <p>12.4. In the interim, while the recruitment process is underway, and to ensure business continuity and uncompromised functionality of the HR & RemCo, Council approval is hence requested for the extension of the current HR & RemCo members’ contracts for a further period of two months from the 01 December to 31 January 2022.</p> <p>12.5. It was recommended that approval be granted for contract extension of the current HR & RemCo members with effect from 01 December 2021 until the 31 January 2022 for:</p> <p>12.5.1 [REDACTED] – Chairperson</p> <p>12.5.2 [REDACTED], and</p>	<p>CEO / Executive: HR</p>



No.	Action Item	Person Responsible
	<p>12.5.3 [REDACTED]</p> <p><u>The following comments were made:</u></p> <p>12.6. Council raised concern over the old Terms of Reference and requested that there be alignment with the Terms of Reference of the various governance committees.</p> <p>12.7. Management requested Council to allow a relook and alignment of the Terms of Reference and the discrepancies within the document.</p> <p>12.8. Management informed Council that the process for reviewing the Terms of Reference for the governance committees is current underway, and one of the key outcomes of the review will be an alignment of the TORs of the various governance committees.</p> <p>The submission was approved by Council.</p>	
13.	<p>Collective Bargaining Update</p> <p>The Executive: HR presented the item.</p> <p>13.1. [REDACTED]</p> <p>13.2. [REDACTED]</p> <p>13.3. [REDACTED]</p>	<p>CEO / Executive: HR</p>

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No.	Action Item	Person Responsible
	<p>[Redacted]</p> <p>13.4. [Redacted]</p> <p>13.5. [Redacted]</p> <p>4 [Redacted]</p> <p><u>Update on COLA discussions</u></p> <p>13.6. [Redacted]</p> <p>13.7. [Redacted]</p> <p><u>Recommendation to Council</u></p> <p>13.8. It was recommended that Council notes the above update.</p> <p><u>The following comments were made:</u></p>	

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No.	Action Item	Person Responsible
	<p>13.9. [REDACTED]</p> <p>13.10. [REDACTED]</p> <p>The submission was noted by Council.</p>	
<p>14.</p>	<p>Contract extension for AREDC Members</p> <p>The Executive: HR presented the item.</p> <p>14.1 The purpose of this memorandum is to request approval for contract extension of Audit, Risk, Ethics and Disclosure Committee (“AREDC”) members effective from 01 December 2021 until 28 of February 2022 for:</p> <p>12.5.4 [REDACTED] - Chairperson; 12.5.5 [REDACTED] and 12.5.6 [REDACTED].</p> <p>14.2 The AREDC members were appointed for a period of three (3) years commencing on 01 December 2018 and ending on 30 November 2021. The recruitment process has commenced for the filling of the AREDC positions. The AREDC positions were advertised in September 2021, to which applicants applied for this position.</p> <p>14.3 In the interim, while the recruitment process is underway, and to ensure business continuity and uncompromised functionality of AREDC, approval is hence requested from the ICASA Council to extend the current AREDC members’ contracts for a period of three (3) months from 01 December to 28 February 2022.</p> <p>14.4 All AREDC members will be remunerated as determined by Council from time to time, in accordance with the approved AREDC Terms of Reference.</p>	<p>CEO / Executive: HR</p>

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No.	Action Item	Person Responsible
	<p><u>Recommendation to Council</u></p> <p>14.5 It was recommended that approval be granted for the extension of the below-mentioned current AREDC members' contracts with effect from 01 December 2021 until 28 February 2022:</p> <p>14.5.1 [REDACTED] – Chairperson;</p> <p>14.5.2 [REDACTED]; and</p> <p>14.5.3 [REDACTED]</p> <p>The submission was approved by Council.</p>	
15.	<p>Appointment of a CCC Member – Engineer / Technical</p> <p>The Executive: HR presented the item.</p> <p>15.1. The purpose of this memorandum was to request approval for the appointment of [REDACTED] to the advertised position of Complaints and Compliance Committee Member – Engineer / Technical, for a period of three (3) years, effective from the date of assumption of duty.</p> <p>15.2. The position of the Complaints and Compliance Committee (CCC) Member – Engineer / Technical was advertised externally from November 2020. However, due to the challenge in attracting the quality of applicants with the required qualifications and technical competencies, the position could not be filled.</p> <p>15.3. The selection committee requested the Human Resources Division to embark on a headhunting process through the recruitment agencies. Subsequently, a total number of four (4) applications were received from Mastech Recruitment Agency on 05 August 2021.</p> <p>15.4. The interviews for the shortlisted candidates were held on 17 September 2021. After a comprehensive evaluation of competencies required and a comparison of all candidates,</p>	<p>CEO / Executive: HR</p>

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No.	Action Item	Person Responsible
	<p>[redacted] was found by the panel to be the most suitable candidate for the advertised position.</p> <p>15.5. [redacted] obtained a National Diploma: Electrical Engineering in 1996, from Peninsula Technikon and a Bachelor in Technology in Electrical Engineering in 1999, from Port Elizabeth Technikon. He also completed Master of Science (Engineering Management) in 2006 from the University of Pretoria. [redacted] [redacted] [redacted] others:</p> <p>14.5.4 [redacted] [redacted] [redacted]</p> <p>14.5.5 [redacted] [redacted] [redacted]</p> <p>14.5.6 [redacted] [redacted] [redacted] [redacted]</p> <p>14.5.7 [redacted] [redacted] [redacted]</p> <p>15.6. [redacted] [redacted] [redacted] [redacted]</p> <p><u>Recommendation to Council</u></p> <p>15.7. [redacted] [redacted] [redacted]</p>	

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No.	Action Item	Person Responsible
	<p style="text-align: center;">[REDACTED]</p> <p style="text-align: center;">[REDACTED]</p> <p>The submission was approved by Council.</p>	
16.	<p>Review Application by National Council of and for Persons with Disabilities</p> <p>The item was presented by the Acting Executive: LRCCC</p> <p>16.1. The purpose of this submission was to advise Council of a review application filed against the Authority by the National Council of and for Persons with Disabilities (“NCPD”).</p> <p>16.2. On 06 October 2021, the Authority received a notice of motion in relation to a review application, filed by National Council of and for Persons with Disabilities (“applicant”/ “NCPD”) in terms of which NCPD seeks an order from Court as follows:</p> <p style="padding-left: 40px;">16.2.1 Reviewing and setting aside the decision of the Authority to make and publish the Code for Persons with Disabilities Regulations 2021, government notice 325 which was published in the Government Gazette on 9 April 2021 (“the Code”);</p> <p style="padding-left: 40px;">16.2.2 Remitting the decision back to the Authority and directing the Authority to draft and publish the Code taking into account the NCPD’s submission; and</p> <p style="padding-left: 40px;">16.2.3 The Authority is directed to pay the applicant’s costs in the event that the matter is opposed.</p> <p>16.3. The chronological background outlining the regulatory framework for the people with disabilities is fully set out in the founding affidavit of the review application under paragraph 14.</p> <p>16.4. For purposes of this submission, it was important to highlight that on 28 March 2014, when ICASA published the Code for People with Disabilities Regulations (the “March draft Regulations”), interested parties were invited to submit comments on the draft Regulations.</p>	CEO / Executive: LRCCC



No.	Action Item	Person Responsible
	<p>16.5. Pursuant thereto, the Authority published a further draft of regulations on 14 November 2014 (the “November draft Regulation”). It is not clear whether Final Regulations were eventually published.</p> <p>16.6. On 20 June 2020, ICASA published once again, draft Regulations (fourth version) and invited written submissions in relation thereto. The NCPD submitted written comments to the draft Regulations and argued that the draft Regulations do not provide adequate protection or promote rights of persons with disabilities, particularly in relation to access to important and essential news.</p> <p>16.7. On 9 April 2021, ICASA published the Code of People with Disabilities Regulations 2021 (2021 Code) along with the Reasons Documents. The NCPD alleges that the 2021 Code did not consider its written submissions, further that, there are no explanations given in the Reasons Documents as to why the submissions were not considered.</p> <p>16.8. On 11 August 2021, the NCPD, through its legal representatives, requested to the Authority to provide reasons as to why its written submissions were not considered in the 2021 Code. The Authority never responded to the correspondence from the NCPD on the basis that the Committee was in the process of finalizing the response when the Authority received the review application in October 2021.</p> <p>16.9. Notwithstanding the above, it is the view of the Committee that the submissions provided by the NCPD were comprehensively considered by the Committee and the decision of the Committee not to include certain aspects of the submissions in the Final Regulations was clearly set out in the Reasons Document.</p> <p>16.10. Further, it is highlighted that not all the submissions were addressed in the Reasons Document and therefore the NCPD is not clear of the reasons why the submissions were ignored.</p>	



No.	Action Item	Person Responsible
	<p>16.11. The Legal, Risk and CCC (“LRCCC”) liaised with the Region Division, in particular Complaints and Compliance Affairs Unit (CCA), in this matter and received a response to what NCPD is alleging. In terms of the CCA response it became clear to LRCCC that NCPD written submission was fairly considered but most comments were rejected and the reasons for rejection were provided.</p> <p>16.12. Having considered the submissions of NCPD and all other relevant factors, the LRCCC is of the view that NCPD has no case against the Authority on the following basis:</p> <p>16.12.1 the fact of the matter is that ICASA did consider the NCPD submission and rejected and accepted some of it. The fact that ICASA rejected some of NCPD submission does not mean that ICASA did not consider the NCPD written submission; and</p> <p>16.12.2 The Authority gave its reasons for the rejection of the NCPD submission.</p> <p><u>Recommendation to Council</u></p> <p>16.13. It was recommended that Council:</p> <p>16.13.1 notes the review application launched by NCPD; and</p> <p>16.13.2 resolve that the LRCCC Division instructs external attorneys to oppose the review application.</p> <p><u>The following comments were made:</u></p> <p>16.14. Council expressed that should the Authority not oppose matters of these nature, it would serve as precedent and might cause problems in the future. Council further expressed that receiving comments does not guarantee that all the comments received will be incorporated into final documents that are issued by the Authority.</p> <p>16.15. Council requested clarity about the submission from the NCDP and specifically which part of their submission would prejudice the NCDP if same is not included for consideration.</p>	



No.	Action Item	Person Responsible
	<p>16.16. The Committee informed Council that it went through the minutes and documentation that accompanied the final Regulations. The Committee developed a comparison matrix, having looked at the complainants' inputs together with the reasons document of the final Regulations, the Committee was in the process of approaching Webber Wentzel with a response when the NCDP served the Authority with the Notice of Motion.</p> <p>16.17. The Division notified Council that the NCDP does not provide guidelines or standards that the broadcasters can use to improve accessibility on their websites. The Division further informed Council that one of the key allegations by the NCDP regarding the Regulations was that "the Regulations will only provide sufficient or adequate protection if their submissions were taken into account wholly as they submitted. The Division advised Council that the onus to prove the above allegation will be on the NCDP, the Authority will on the other hand have to provide adequate proof and information that the Regulations provide adequate protection and promote the rights of persons with disabilities.</p> <p>The submission was approved by Council.</p>	
17.	<p>General</p> <p><u>Nomination for Councillor [REDACTED] by the Department of Science and Innovation</u></p> <p>17.1. The Department of Science and Innovation has nominated Councillor [REDACTED] to serve in a committee to peer review the draft National Satellite Communications strategy.</p> <p>17.2. Council resolved that the Corporate Secretary draft an email attaching the invitation letter and send to Councillors, to enable Council to see the actual invitation and what it entails. Approval would follow by means of a round robin.</p> <p><u>The update by the CEO from the meeting with infrastructure CEO's.</u></p>	Council



No.	Action Item	Person Responsible
	<p>17.3. The meeting took place on 08 November 2021, which was robust but fruitful. Prior to the meeting beginning the Authority received a letter from MTN notifying the Authority that their rights remain reserved in light of the litigation that was underway.</p> <p>17.4. During the meeting it was made clear to all parties that the purpose of the meeting was not to try and settle the litigation. The purpose was to consult with industry on the provisional Radio Frequency Spectrum licensing regime, that the Authority is considering to implement.</p> <p>17.5. Infrastructure CEOs advised that the provisional licensing regime should be finalised and implemented as soon as possible.</p> <p>17.6. The provisional licensing regime has been given a time line from 01 Dec 2021 until end of March 2021 or end of April 2021</p> <p>17.7. The acquisition fees for the provisional licensing regime was flagged, and the CEOs were of the view that they would have no problems with the fees being imposed by the Authority as long as they are fair.</p> <p>17.8. All the CEOs welcomed the engagement, and all of them took the view that they will await the next step from the Authority. The CEOs further expressed the view that if the notice gives them comfort that between now and the end of November 2021, it may solve their litigation issues.</p> <p><u>Seventh Amendment to the ICT Covid-19 National Disaster Regulations</u></p> <p>17.9. The purpose of the submission was to advise Council of the amendments to the Information and Communications Technology (ICT) Covid-19 National State of disaster Regulations which will be circulated via Round Robin Resolution for approval.</p>	

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No.	Action Item	Person Responsible
	<p>Amendment to the Covid-19 Regulations:</p> <p>17.10. On 31 August 2021, the Authority published the Sixth Amendment to the COVID-19 Regulations.</p> <p>17.11. Regulations 6(7) and 6(12A) of the Sixth Amendment to the COVID-19 Regulations provide as follows:</p> <p>17.11.1 “(7) No radio frequency spectrum licence assigned pursuant to sub-regulations (3) and (4), will be valid after 30 November 2021. Any Licensee assigned with radio frequency spectrum pursuant to sub-regulations (3) and (4) must wind up their operations, on or before 30 November 2021. The Authority will not extend any further, the utilisation of the radio frequency spectrum contemplated in sub-regulations (3) and (4), beyond 30 November 2021.</p> <p>17.11.2 The duration of spectrum sharing agreements approved by the Authority pursuant to these Regulations shall not exceed the duration of the temporary radio frequency spectrum licence contemplated in sub-regulations (6) and (7). The licensees with spectrum sharing agreements approved by the Authority in terms of these Regulations, must wind up their operations with respect to their spectrum sharing agreements, on or before 30 November 2021. The Authority will not approve any spectrum sharing agreements or further extension of the spectrum sharing agreements in terms of these Regulations beyond 30 November 2021.”</p> <p>Objectives and the structure of the Regulations</p> <p>17.12. The purpose of the Regulations has been updated in light of new objectives which the Authority intends to achieve with the Regulations e.g. promotion of competition in the sector.</p>	

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No.	Action Item	Person Responsible
	<p>17.13. The Regulations will usher in a new provisional spectrum regime and provides for the continuation of the previous temporary spectrum regime until 30 November 2021.</p> <p>17.14. All other provisions not relating to the temporary spectrum which were included in the COVID-19 Regulations, 2020 as amended, are re-instated in the Regulations.</p> <p>17.15. The Authority to make available the provisional spectrum from 1 December 2021 until 30 June 2022, or three months post termination of the National State of Disaster, whichever comes first.</p> <p>17.16. The licensees should be required to pay prorated spectrum fees in terms of the Radio Frequency Spectrum Licence Fees Regulations, 2010 for the usage of spectrum from 1 December 2021 until the expiry of the provisional spectrum licences.</p> <p>17.17. During the meeting held between the CEO of ICASA and the CEOs of the Network Operators on 8 November 2021, the operators expressed their willingness to pay a fair acquisition fee determined by ICASA for provisional spectrum licences – taking into account the spectrum valuation. However, some of the operators indicated that high acquisition fee may not be affordable to them.</p> <p>17.18. The calculation of the acquisition fees is based on a discounted period of five (5) months – taking into account the time required for the licensees to wrap up their operations on the temporary spectrum. However, the duration of the provisional spectrum will be for the period of seven (7) months (i.e. 1 December 2021 – 30 June 2022). The successful applicants will be required to pay acquisition fees for their respective temporary assignments by 30 November 2021.</p> <p>17.19. The application fee stipulated in the Auction ITA may nonetheless be used on a pro rata basis (i.e. R3000 000.00/240 months*7 months = R87 500). The application fee is non-refundable and an application for the provisional</p>	

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No.	Action Item	Person Responsible
	<p>spectrum licence must be accompanied by proof of payment of the application fee.</p> <p>17.20. The Authority should consider inviting new applications for the provisional spectrum licences. The current holders of the temporary spectrum licences should also be required to re-apply for the provisional spectrum if they elect to do so.</p> <p>17.21. The proposed criteria for the assignment of the provisional spectrum takes into account the network performance information required from current holders of the temporary spectrum and new applicants.</p> <p>17.22. The assignment of the temporary spectrum was aimed at easing congestion on operators' networks during the COVID-19 lockdown period, therefore it had a far greater benefit to the public by ensuring reliable quality broadband connectivity.</p> <p>17.23. The extension of the COVID-19 spectrum assignment process is likely to have a long-term negative effect on competition because it is only aimed at urgently easing network traffic congestion without addressing any competition issues.</p> <p>17.24. The extension of the period that the temporary spectrum is assigned in terms of the COVID-19 Regulations (or a new temporary spectrum process) is likely to have a negative effect on competition as it will give successful applicants a prolonged unfair advantage over other players.</p> <p>17.25. However, Council should also consider Senior Counsel's advice wherein he advises ICASA to consider options parallel to the interdict application. Senior Counsel advises that if the interdict is granted, it will have damaging effect on the competition and derail the award of the permanent spectrum in March 2022.</p>	

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No.	Action Item	Person Responsible
	<p><u>The following comments were made:</u></p> <p>17.26. Council inquired whether the seven-days referred to in the Regulations are calendar days or working days, and further requested that it be stipulated in the Regulations.</p> <p>17.27. Council inquired if the basis for the award of the provisional spectrum will be specified in the Regulations, or if the award will be made at the Authorities discretion.</p> <p>17.28. The Committee informed Council that industry players are aware that they are not guaranteed the same spectrum that they are currently holding in the current regime.</p> <p>17.29. The Committee informed Council that the dates referred to are working days and the Committee will make it clear on the Regulations.</p> <p>17.30. Senior Counsel advised Council that the purpose of the Regulations will be revised to be in line with the approach that has been advised to the Authority.</p> <p>17.31. Senior Counsel advised that the time frame include three (3) months after the National State of disaster or three (3) months after the permanent licensing of Spectrum.</p> <p>17.32. Management requested clarity with regards to the time frame being linked to the auction and the possibility of litigation being used as a delaying tactic to prolong the provisional spectrum regime.</p> <p>17.33. Management further requested clarity with regards to how the fees should be framed if the Authority was to go with the option of fixing a date to be in line with the permanent award of spectrum.</p> <p>17.34. Council was of the opinion that linking the time frame to the auction might be problematic as the past has shown that it will be the same operators who are likely to take the Authority to Court regarding spectrum. Council expressed that the above might bring a complication as the conclusion date of the auction cannot be confirmed.</p>	



No.	Action Item	Person Responsible
	<p>17.35. Senior Counsel advised that when an end date of the provisional spectrum is included in the Regulations, it should be to achieve a particular purpose and it should not create an expectation of extension as previously done.</p> <p>17.36. Senior Counsel advised that Regulation 7C includes “or three (3) months after the termination of the National State of Disaster, whichever comes first”. Senior Counsel advised that this statement creates certainty.</p> <p>17.37. The Committee requested that Council allow it to reconvene and draft a final Regulation document for approval by Council, as the aim was to publish the Regulations on 10 November 2021.</p> <p>17.38. Senior Counsel advised that the draft should take into account and specify that the new set of Regulations should be clear to ensure that there is no ambiguity about the current Regulations.</p> <p>17.39. Council resolved that the Committee has until 19:00 to finalise all amendments and include inputs on the Regulations. Secretariat should circulate the RRR tonight, and Council has until 08:00 am on 10 November 2021 to approve and sign the RRR.</p> <p>17.40. Council resolved that the media statement be prepared and circulated with Council for inputs by close of business.</p>	
18.	<p>Closure</p> <p>The Chairperson thanked all who were present at the meeting and closed the meeting at 15:44 pm.</p>	Council
19.	Date of next meeting: TBA	Secretariat

Signed:  _____

Date: 26/04/2022

(Chairperson)