



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY COUNCIL MEETING		
Date	16 August 2021	
Time:	08:00	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
By Invitation	[REDACTED]	CEO
	[REDACTED]	CAE
	[REDACTED]	Acting CFO
	[REDACTED]	Acting Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	Exec: Licensing and Compliance
	[REDACTED]	SM: ICT Licensing Services
	[REDACTED]	SM: Talent and Performance Management
	[REDACTED]	Litigation & General Legal Support Specialist
	[REDACTED]	RF Specialist: E&T
	[REDACTED]	Manager: Broadcasting Compliance
	[REDACTED]	Manager: Cyber Security
	[REDACTED]	Regional Manager - Northern Cape
	[REDACTED]	Acting Executive: LRCCC Division
Apologies		

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No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>The Chairperson opened the meeting at 08:00 and welcomed all present.</p> <p>Apologies</p> <p>No apology was noted.</p>	Chairperson
2.	<p>Ratification of the Agenda</p> <p>The approval of the minutes of 30 July 2021, as well as the matters arising item, were deferred to the next Council meeting.</p>	Council
3.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
4.	<p>Matters Arising</p> <p>The Matters Arising document was deferred to the next Council meeting.</p>	CEO
5.	<p>International Engagements (“Standing item”)</p> <p>There was no update on International Engagements.</p>	
6.	<p>Licensing of IMT (“Standing Item”)</p> <p>The CEO and external counsel provided a brief update on:</p> <p>6.1 <u>Telkom / e.tv</u></p> <p>6.1.1 It was noted progress has been made in the settlement negotiations on the e.tv application.</p> <p>6.1.2 A meeting was held at ICASA Head Office – Centurion, on 10 August 2021 between the ICASA CEO, ICASA’s internal legal counsel, and the eMedia Group, with the aim of addressing some of the concerns raised by e.tv. The parties agreed in principle on the terms on the</p>	CEO

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No.	Action Item	Person Responsible
	<p>settlement and how the procedural defects in the publication of the ITAs will be remedied. A follow-up meeting will be held today, the 16th August 2021, to finalise on the terms, and to receive final approval from all the parties on the proposed settlement terms.</p> <p>6.1.3 The main areas of mutual agreement have been:</p> <p>6.1.3.1 that e.tv should not be forced to migrate prematurely outside what the digital migration plan sets out; and</p> <p>6.1.3.2 that issues relating to the licensing of temporary spectrum will not form part of this litigation, due to the fact that temporary spectrum has been issued in terms of the COVID-19 ICT National State of Disaster Regulations, and not pending the auction.</p> <p>6.1.4 It was further noted that parties were beginning to add new issues that were not dealt with in the initial court papers. For instance, e.tv is tabling a requirement for broadcasters to be accommodated as part of IMT spectrum for purposes of 5G broadcasting.</p> <p>6.1.5 Telkom has also indicated that they would like certain parts from consultation on the competition assessment to be excluded. A list of those parts they want to be excluded, will be forwarded to the Authority in due course.</p> <p>6.2 <u>MTN</u></p> <p>6.2.1 It was noted that a bilateral meeting was held, and the following matters were raised by MTN:</p> <p>6.2.1.1. 3,5 GHz band must not be part of the opt-in round.</p> <p>6.2.1.2 3600 MHz should be included in the licensing process, for the purposes of determining the spectrum caps. According to MTN, there is a likelihood that this band will be identified for IMT soon, and, if it is not included in the licensing process, it will disadvantage other parties who don't have access to it.</p>	

No.	Action Item	Person Responsible
	<p>6.2.2 MTN has requested time to engage internally on the responses stipulated by the Authority on the two (2) main issues they have raised.</p> <p>6.3 The following options were tabled from an advisory memo from Senior Counsel, should the settlement not be reached on the Telkom/e.tv application:</p> <p>6.3.1 Option 1 - The Authority to ask the court to make an order on terms which are appropriate to enable the Auction ITA to proceed;</p> <p>6.3.2 Option 2 – To withdraw the Auction ITA and WOAN ITA;</p> <p>6.3.3 Option 3 – The Authority to withdraw its opposition to the Telkom review application.</p> <p><u>Comments</u></p> <p>6.4 The new Minister of DCDT has notified all parties that, should the settlement negotiations fail, she will file papers to oppose the review application.</p> <p>6.5 The Disaster Management Committee will be having a meeting to deal with the issue of the expiry of temporary spectrum.</p> <p>6.6 Clarity was sought on whether the court litigation in the Telkom matter has been abandoned, since settlement negotiations are being pursued.</p> <p>6.7 What informs the request of e.tv for new directives stipulating that 5G be issued by the Minister.</p> <p>6.8 Council requested for the advisory memorandum from Senior Counsel to be circulated to Councillors. The memo reiterates the position of Council in relation to the position that the settlement negotiations should succeed at all costs, but not at any price.</p>	
7	<p>Change and Update of ICASA Licensee Information- EXTRISERVE (PTY) LTD t/a LM RADIO</p> <p>The purpose of the submission was for Council to note the notice by Extriserve (Pty) Ltd trading as LM Radio, requesting the Authority to effect changes to its licence.</p>	<p>CEO / Exec: Licensing and Compliance</p>

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No.	Action Item	Person Responsible
	<p>The Exec: Licensing and Compliance presented the item:</p> <p>7.1 On 18 July 2014, the Authority granted and issued Extriserve (Pty) Ltd with an Individual Broadcasting Service (I-BS) licence and a Radio Frequency Spectrum (RFS) Licence.</p> <p>7.2 On 07 July 2021, the Authority received a notice from Extriserve (Pty) Ltd advising the Authority of changes with respect to its contact person, contact details and physical address.</p> <p>7.3 Extriserve (Pty) Ltd did not submit its notice to the Authority within the prescribed period of seven (7) days of the occurrence of the change as stipulated in the regulations. The licensee submitted a letter to the Authority requesting a condonation for late filing of the notice.</p> <p>7.4 The Compliance division had no objection to the reasons for condonation, and the filing of the changes could be effected in terms of the Regulations.</p> <p>Recommendation</p> <p>It was recommended that Council notes and approves the changes.</p> <p>The following comments were made:</p> <p>7.5 Council cautioned that when a licensee is allowed to effect changes to its licence, and its notice is submitted outside the prescribed period, this creates a precedent for other licensees.</p> <p>7.6 Clarity was sought on the impact the changes in the licence will have on the BBE and the management structure of the company.</p> <p>Council resolved to approve the recommendation.</p>	
8.	Change and Update of ICASA Licensee Information-Capricorn FM (Pty) Ltd	CEO/ Exec: Licensing and Compliance

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No.	Action Item	Person Responsible
	<p>The purpose of the submission was for Council to note the notice by Capricorn FM (Pty) Ltd, requesting the Independent Communications Authority of South Africa (the "Authority") to effect changes to its licence information.</p> <p>The Manager: Broadcasting Compliance presented the item:</p> <p>8.1 On 28 August 2019, the Authority granted and issued Capricorn FM with a renewed Individual Broadcasting Service (I-BS) licence and a Radio Frequency Spectrum (RFS) Licence.</p> <p>8.2 On 06 June 2021, the Authority received a notice from Capricorn FM advising the Authority of changes with respect to its contact person (s) and contact details.</p> <p>8.3 The licensee submitted a letter to the Authority requesting a condonation for late filing of the notice. In the letter, the Licensee states that the failure to notify the Authority of the changes was an oversight, and, therefore, they take full responsibility for the failure.</p> <p>8.4 The Compliance division was satisfied that in all respects, other than them having not filed within the prescribed timelines, the Licensee had complied with the regulations in the filing of its notice.</p> <p>Recommendation:</p> <p>It was recommended that Council approve the changes to the licences of Capricorn FM.</p> <p>The following comment was made:</p> <p>8.5 Council requested that licensees should be notified of the concerns raised by Council with regards to the late submission of notifications.</p> <p>8.6 It was also suggested that the Regulations be amended such that penalties should be imposed to licensees who submit their notices late.</p> <p>Council resolved to approve the recommendation</p>	
9		<p>CEO/ Exec: Licensing</p> <p style="text-align: right;">6 <i>KM</i></p>

No.	Action Item	Person Responsible and Compliance
	<p data-bbox="279 302 1252 414">Transfer of control of an I-ECNS licence, from Telemedia (Pty) Ltd's current shareholders to Telemedia (Pty) Ltd's proposed new shareholders</p> <p data-bbox="279 481 1252 638">The purpose of the submission was to request Council to approve the transfer of control of an I-ECNS licence from the current shareholders of Telemedia (Pty) Ltd ("the Applicant") to Telemedia (Pty) Ltd's proposed new shareholders ("the Transferee").</p> <p data-bbox="279 705 1252 750">The Senior Manager: ICT Licensing Services presented the item:</p> <p data-bbox="279 772 1252 884">9.1 On 4 December 2020, the Authority received an application from the Applicant to transfer the control of its I-ECNS licence to the Transferee. The application was not fully completed.</p> <p data-bbox="279 918 1252 996">9.2 The Applicant submitted a new application for the transfer of control on 11 December 2020.</p> <p data-bbox="279 1030 1252 1220">9.3 On 22 January 2021, the Authority published General Notice 667 in Government Gazette No 44095 inviting all interested persons to make written representations in relation to the application within fourteen (14) working days of the date of the publication of the notice in the Government Gazette.</p> <p data-bbox="279 1254 1252 1332">9.4 No written representations were received by the closing date of 11 February 2021.</p> <p data-bbox="279 1366 1252 1478">9.5 On 11 March 2021, the Applicant submitted the Business Plan, the Independent Competition Analysis Report, as well as the Consumer Analysis Report.</p> <p data-bbox="279 1512 1252 1668">9.6 On 07 April 2021, an e-mail was sent to the Applicant requesting a breakdown of the Transferee shareholding, and clarification on the Transferee's HDI information. The requested information was provided on 09 April 2021.</p> <p data-bbox="279 1724 1252 1915">9.7 The Applicant has not been found guilty of any contravention by the Complaints and Compliance Commission ("CCC"). Further, the Applicant has paid the licence fees due and payable at the date of the applications. Furthermore, the Transferee has 36.18% ownership interest held by HDIs.</p>	


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No.	Action Item	Person Responsible
	<p>9.8 EXCO/OPCO has on 16 July 2021, approved the transfer applications and the vetted Reasons Document, for tabling at Council.</p> <p>Recommendation:</p> <p>9.9 It was recommended that Council approves the application for the transfer of control of the I-ECNS licence for the following reasons:</p> <p>9.9.1 The Applicant has not been found guilty of any contravention by the CCC;</p> <p>9.9.2 The Applicant has paid the licence fees due and payable at the date of the applications; and</p> <p>9.9.3 The Transferee has 36.18% ownership interest held by HDIs.</p> <p>9.10 It is further recommended that Council approves the vetted Reasons Document.</p> <p>The following comment was made:</p> <p>9.11 Council sought clarity on whether the Transferee is truly an operator, and on whether the HDI was represented honestly.</p> <p>9.12 Council noted the need for improvement in the communication between the Authority and licensees regarding notices.</p> <p>9.13 Clarity on how the spectrum transfer will be managed was sought.</p> <p>9.14 It is noted that the spectrum transfer analysis submission might have an impact on the requested recommendation</p> <p>Council resolved to defer the submission to the next Council meeting, subject to the analysis of the spectrum transfer being done.</p>	
10.	Request of Extension of Commencement of Operations by Kwese Free TV	CEO/ Exec: Licensing and Compliance

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No.	Action Item	Person Responsible
	<p>The purpose of the submission was to request Council to approve the request from Kwesé Free TV (Pty) Ltd (the "Licensee"), to extend the commencement of its broadcast operations by 24 months.</p> <p>The Executive: Licensing and Compliance presented the item:</p> <p>10.1 On 11 September 2019, the Authority issued the Licensee with a Commercial Free-To-Air Television Broadcasting Service Licence.</p> <p>10.2 In terms of regulation 5 of the Regulations on Amended Standard Terms and Conditions for Individual Broadcasting Services, the Licensee is required to commence its operations on or before 10 September 2021.</p> <p>10.3 The Compliance division received a request from the Licensee to extend its commencement date by 24 months, from 01 October 2021 to 30 September 2023.</p> <p>10.4 The Compliance division considered the submission, and was of the view that the Licensee demonstrated that the delays it was experiencing, were beyond its control. Therefore, this warranted the granting of its request for extension of commencement of its operations.</p> <p>10.5 The request for condonation was also considered by the Compliance division and approved, as it did not unfairly prejudice any other stakeholders.</p> <p>Recommendation</p> <p>10.6 It is recommended that Council approve the Licensee's request for extension of commencement of operations for a period of 24 months, starting from 11 September 2021 to 10 September 2023 for the following reasons:</p> <p>10.6.1 The request is in line with the provisions of Regulation 5(1)(b) of the Amended Standard Terms and Conditions Regulations; and</p> <p>10.6.2 The Licensee has demonstrated that the delays it has experienced are beyond its control, and shown good cause for the extension of its commencement period.</p>	

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No.	Action Item	Person Responsible
	<p>The following comment was made:</p> <p>10.7 What guarantee does Council have that the delays demonstrated, will be addressed by the recommended commencement date?</p> <p>10.8 Council raised a concern about the length of the recommended extension.</p> <p>10.9 Council requested clarity on whether the Authority requires Licensees to provide written supporting documents as evidence, when a request for an extension is made.</p> <p>10.10 Council requested to be provided with a detailed report on how the Licensee intends on being on-air on the recommended commencement date.</p> <p>Council resolved to approve the recommendation, subject to the inputs made.</p>	
11	<p>Request for Council to dissolve the Digital Sound Broadcasting Council Committee</p> <p>The purpose of the submission was to request Council to dissolve the Digital Sound Broadcasting (“DSB”) Council Committee (“the Committee”).</p> <p>RF Specialist: E&T presented the item:</p> <p>11.1 The Committee was established in 2017, in terms of section 17 of the Independent Communications Authority of South Africa, 2000 (Act No 13 of 2000) (the “ICASA Act”).</p> <p>11.2 The purpose of the Committee was to develop a Findings Document on the use of DSB.</p> <p>11.3 The DSB Council Resolution was amended on numerous occasions due to the replacements of Councillors and Committee Members in the Committee.</p> <p>11.4 On 24 November 2020, Council signed the last DSB Council Resolution.</p> <p>11.5 The Committee published the final DSB regulations and reasons document on 23 April 2021. Public hearings on the</p>	Cllr 


No.	Action Item	Person Responsible
	<p>draft regulations were undertaken in the period of 20 to 21 January 2021.</p> <p>11.6 The Committee was able to align the DSB regulations to the relevant documents published by the Department of Communications and Digital Technologies (“DCDT”), namely: the Policy Direction on the Introduction of DSB in South Africa; and the draft White Paper Audio and Audio-visual Content Services Policy Framework: A New Vision for South Africa.</p> <p>11.7 The DSB Council Committee has completed its delegated powers, functions, and duties.</p> <p>Recommendation</p> <p>It is recommended that Council dissolves the DSB Council Committee.</p> <p>Council resolved to approve the recommendation.</p>	
12	<p>CCA V VUMA FM - Submission</p> <p>The purpose of the submission was to table the recommendation of the CCC before Council in the matter between CCA and Vuma FM.</p> <p>Cllr ██████████ presented the item:</p> <p>12.1 On 9 November 2020, CCA of ICASA referred a complaint to the CCC for investigation in terms of Section 17B(a) of the ICASA Act.</p> <p>12.2 CCA alleged that Vuma FM has contravened provisions of the terms and conditions of its Individual Broadcasting Service Licence, the Universal Service and Access Fund Regulations, 2011 and the General Licence Fees Regulations, 2012.</p> <p>12.3 On 11 May 2021, the CCC received a proposed settlement agreement between the parties. The settlement agreement arose from the approval by Council to the amendments to Clauses 4 and 5 of Vuma FM’s Individual Commercial Sound Broadcasting Service.</p>	Cllr ██████████

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No.	Action Item	Person Responsible
	<p>12.4 At the hearing held on 14 May 2021, the CCC was not persuaded that the proposed settlement agreement dealt with all the issues of non-compliance raised by the CCA.</p> <p>12.5 As a result, the CCC directed the parties to have further settlement discussions with a view to reaching a more comprehensive settlement agreement. The parties were afforded 21 days to file an amended settlement agreement for CCC's consideration.</p> <p>12.6 Pursuant to the CCC's directive on 14 May 2021, the parties filed an amended settlement agreement dated 18 June 2021.</p> <p>Recommendation to Council regarding an order</p> <p>12.7 The CCC recommends that the following order be issued by Council of ICASA:</p> <p>12.7.1 Direct Vuma FM to desist from any further contravention in terms of section 17E(2)(a) of the ICASA Act; and</p> <p>12.7.2 Order that the settlement agreement, between CCA and Vuma FM, dated 18 June 2021 be made an order of the CCC.</p> <p>Council resolved to approve the recommendation.</p>	
13	<p>Recommendation of the Complaints and Compliance Committee regarding Matatiele Concerned Community and The Voice of Matatiele Community Radio ("TVOM")</p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between Matatiele Concerned Community ("Complainant") and The Voice of Matatiele Community Radio ("Respondent").</p> <p>Cllr [REDACTED] presented the item:</p> <p>13.1 On 11 December 2020, the Complainant lodged a complaint with the CCC against the Respondent for the following allegations of contravention:</p>	Cllr [REDACTED]


No.	Action Item	Person Responsible
	<p>13.1.1 That TVOM has contravened Regulation 9(1)(e) of the Community Broadcasting Services Regulations of 2019 (“the Regulations”) by having political office bearers involved or playing a role in the TVOM Board, namely ANC Office Bearers from Matatiele Local Municipality and Alfred District Nzo Municipality.</p> <p>13.1.2 That TVOM has not held an AGM since its formation, and after being granted with the Licence. This was in contravention of clause 6.2 and clause 9 of the Constitution of TVOM.</p> <p>13.1.3 That TVOM has contravened regulation 12(1) of the Regulations, by not getting the Management Contract approved by the Authority.</p> <p>13.1.4 That TVOM has contravened clause 4 of its licence conditions, by not providing any feedback on its operational, and financial performance to the community.</p> <p>13.1.5 That TVOM has contravened clause 5 of its licence conditions on Programming. The Complainant alleged that the licensee was not complying with any part of clause 5.</p> <p>13.2 The hearing of the CCC to hear oral arguments from the parties was held on 20 May 2021.</p> <p>13.3 Factors to be considered by the Authority when making a decision in terms of Section 17E of the ICASA Act:</p> <p>13.3.1 The recommendation of the CCC;</p> <p>13.3.2 The nature and gravity of the non-compliance;</p> <p>13.3.3 The consequences of non-compliance;</p> <p>13.3.4 The circumstances under which the non-compliance occurred; and</p> <p>13.3.5 The steps taken by the licensee to remedy the complaint.</p>	

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No.	Action Item	Person Responsible
	<p>Recommendation to Council regarding an order</p> <p>13.4 That Council considers the following order for approval:</p> <p>13.4.1 The Voice of Matatiele Community Radio should desist from the non-compliance of failing to hold an AGM on an annual basis.</p> <p>13.4.2 Within 14 days after ICASA has published its finding and order, The Voice of Matatiele Community Radio is ordered to convene an AGM, with a view to electing members of the Board.</p> <p>13.4.3 The Voice of Matatiele Community Radio should desist from the non-compliance of failing to report on its operational and financial performance to the community.</p> <p>13.4.4 The Voice of Matatiele Community Radio should reduce the annual membership fee from R120 to R60.</p> <p>Following comments were made:</p> <p>13.5 Council sought clarity on the issue of the expired licence, and how it pertains to the ruling of the CCC.</p> <p>Council resolved to approve the recommendation</p>	
14	<p>AGA Council Committee Quarter 1 Report</p> <p>The purpose of the submission was for Council to note the update on the activities as well as the developments around the Karoo Central Advantage Areas (KCAAA) during quarter one (1) of the 2021/2022 financial year.</p> <p>The Regional Manager - Northern Cape presented the item:</p> <p>14.1 According to section 30 (Control of Radio Frequency Spectrum) of the Electronic Communications, 2005 (Act No 36 of 2005) (the "ECA"), ICASA is mandated to ensure efficient usage and effective management of the radio frequency spectrum.</p>	Cllr 

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No.	Action Item	Person Responsible
	<p>14.2 ICASA requires the necessary spectrum monitoring infrastructure within the Northern Cape Province to detect emissions and to mitigate any radio frequency interference (RFI) to the Square Kilometre Array (SKA) radio telescopes.</p> <p>14.3 The ICASA AGA Council Committee was established to provide, amongst others, an oversight on all activities in the KCAAA in line with ICASA's mandate and further to advise and appraise Council on developments relating thereto.</p> <p>14.4 In terms of the ICASA Delegation of Authority (DoA) Framework, 2018 ("DOA"), the established Committee must advise and update Council on all developments and activities that transpire in the KCAAA on a quarterly basis, be they adoption of policies, procedures and guidelines used in relation to spectrum management for protecting the SKA.</p> <p>14.5 A Memorandum of Agreement (MoA) was signed on 24 April 2018, between ICASA, the Department of Science and Innovation (DSI) and the South African Radio Astronomy Observatory (SARAO).</p> <p>14.6 The purpose of the MoA was to provide a framework and mechanisms for cooperation between the parties, and for the preservation and protection of the declared Karoo Central Astronomy Advantage Areas ("KCAAA") in terms of the provisions of the Astronomy Geographic Advantage Act, 2007 (Act no. 21 of 2007) (the AGA Act).</p> <p>14.7 The activities and projects completed were part of the process that falls within the Authority's purview. This provided constant assurance that the SKA, and the declared area, was protected, all operators within the declared areas were compliant with the prerequisite regulations, and that the Authority continues support to the Ministry of Science and Innovation on its endeavours to carry out the SKA project hosted in South Africa was provided.</p> <p>Recommendation</p> <p>It is recommended that Council to note all the activities, and developments that took place in the first quarter of the financial year 2021/2022 that are within ICASA's mandate and responsibilities.</p>	

No.	Action Item	Person Responsible
	Council resolved to note the submission.	
15	<p>Dissolution of the Review of the Municipal Election Broadcasting Regulations Council Committee</p> <p>The purpose of the submission was to request Council to approve the recommendation to dissolve the Review of the Municipal Election Broadcasting Regulations Council Committee and to note the Closeout Report.</p> <p>The Manager: Cyber Security presented the item:</p> <p>15.1 On 16 September 2020 Council resolved to establish a Committee to review the Municipal Election Broadcasting Regulations of 2011.</p> <p>15.2 Council mandated the Committee to review the regulations on Municipal Elections Broadcasting, and related matters under sections 56, 57, 58, and 59 of the ECA.</p> <p>15.3 The review process was aimed at improving the regulations to ensure their relevance and best practice model. The review process also presented the Authority with an opportunity to provide clarity to stakeholders on different responsibilities and expectations for the Broadcasting Service Licensees, political parties, and independent candidates contesting the election, during elections broadcasting.</p> <p>15.4 The Committee published the Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations, 2021 ('the Regulations'), in preparation for the 2021 Municipal elections, in Government Gazette No 44370 of 31 March 2021.</p> <p>15.5 The Regulations included independent candidates on the allocation of PEB slots, pursuant to the New Nation Movement NPC Constitutional Court Judgment. As a result, the Authority will allocate airtime slots for political parties, and independent candidates, to broadcast their PEBs.</p> <p>15.6 The Regulations increased the availability of airtime slots from eight (8) to ten (10). The public broadcaster is obliged to make available, every day and throughout the election broadcast period, ten (10) timeslots of fifty (50) seconds each for the broadcast of PEB.</p>	Cllr 

No.	Action Item	Person Responsible
	<p>15.7 The Regulations further decreased the time allocation from one (1) minute timeslots to fifty (50) seconds.</p> <p>15.8 The Authority is ready for the upcoming elections, from a regulatory perspective, as a result of the work completed by the Committee.</p> <p>15.9 Council is in the process of establishing a compliance monitoring Committee, and two (2) staff members from this Committee will form part of the compliance monitoring Committee for purposes of continuation.</p> <p>Recommendation</p> <p>It is recommended for Council to dissolve the Review of the Municipal Election Broadcasting Regulations Council Committee, and to note the closeout report outlining the findings and recommendations pursuant to the completion of the delegated powers, functions, and duties by the Committee.</p> <p>Council resolved to approve the submission.</p>	
16	<p>Request approval from Council for the initiation of the recruitment process to fill the positions of Human Resources and Remuneration Committee (HR & REMCO) and Audit, Risk, Ethics and Disclosure Committee (AREDC)</p> <p>The purpose of the submission was to obtain approval from Council for the initiation of the recruitment process to fill the positions on the Human Resources and Remuneration Committee (HR & REMCO) and the Audit, Risk, Ethics and Disclosure Committee (AREDC), and to further nominate three (3) Councillors for each Committee, including Chairperson of Council, to assist with the recruitment processes for these Committees</p> <p>SM: Talent and Performance Management presented the item:</p> <p>16.1 HR & REMCO</p> <p>16.1.1 In 2018, Council appointed four (4) HR & REMCO members on three (3) year contracts. In 2020, the Chairperson of the committee resigned, which left the Committee with three (3) members.</p>	CEO/Exec: Human Resources

No.	Action Item	Person Responsible
	<p>16.1.2 The terms of reference for HR & REMCO stipulate that the Committee shall comprise of a minimum of three (3) members, and the tenure of membership for the committee shall be a term of three (3) years.</p> <p>16.1.3 The terms of reference further state that members can reapply for appointment for an additional term, but cannot serve for more than two (2) terms.</p> <p>16.1.4 In terms of the current member composition, [REDACTED]</p> <p>16.1.5 The contracts of the current members will expire on 30 November 2021.</p> <p>16.2 AREDC</p> <p>16.2.1 AREDC consists of three (3) members, who were appointed by Council in December 2018. The contracts for the current members will expire on 30 November 2021.</p> <p>16.2.2 The terms of reference of AREDC stipulate that the Committee shall comprise of a minimum of three (3) members, and that the tenure of membership for the committee shall be a term of three (3) years.</p> <p>16.2.3 The terms of reference further state that members can reapply for appointment for an additional term, but may not serve for more than two (2) terms.</p> <p>16.2.4 All current members are eligible for re-appointment, since they have only served one (1) term.</p> <p>Recommendation</p> <p>It is recommended that Council approves the initiation of the recruitment process to fill the positions of Human Resources and Remuneration Committee (HR & REMCO) and Audit, Risk, Ethics and Disclosure Committee (AREDC), and nominates three (3) Councillors for each Committee, including the Chairperson of Council, to assist with the recruitment processes for these Committees.</p>	

No.	Action Item	Person Responsible
	<p>Following comments were made:</p> <p>16.3 The composition of the panel for HR & REMCO is as follows:</p> <p>16.3.1 [REDACTED] – Chairperson of Council;</p> <p>16.3.2 Two (2) Councillors [REDACTED]; and</p> <p>16.3.3 A Human Resources Division Representative.</p> <p>16.4 The composition of the panel for AREDC is as follows:</p> <p>16.4.1 [REDACTED] – Chairperson of Council;</p> <p>16.4.2 Two Councillors ([REDACTED]); and</p> <p>16.4.3 Human Resources Representative.</p> <p>16.5 Council indicated that the requirement for AREDC members to have a Chartered Accountant (CA) qualification should be mandatory. This requirement will afford Council with credible professional guidance, and also assist the Authority to have recourse professionally should it be misguided.</p> <p>16.6 Council further indicated that HR & REMCO members should be required to be registered HR practitioners.</p> <p>Council resolved to approve the submission.</p>	
17	<p>ICASA v Primedia – SCA Petition for Leave to Appeal Judgement</p> <p>The purpose of the submission was to apprise Council of the judgment delivered on 2 August 2021 in the application for leave to appeal the order of J Tolmay in the matter between the Authority and Primedia (Pty) Ltd (“Primedia”). Furthermore, the Legal, Risk and CCC Division has analysed the judgment, and was of the considered view that the Authority should petition the Supreme Court of Appeal for leave to appeal.</p> <p>The Specialist: Litigation, Contracts & General Legal Support presented the item:</p>	<p>CEO/ Acting Executive: LRCCC</p>

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No.	Action Item	Person Responsible
	<p>17.1 On 3 June 2005, Primedia applied for an amendment to its Talk Radio 702 licence to migrate from the MW to the FM frequency band. This resulted in Primedia exercising control over three FM licences, which was more than the maximum prescribed by sections 49(2) and (3) of the repealed Independent Broadcasting Authority Act, 1993 (Act No 153 of 1993) ("IBA Act").</p> <p>17.2 Primedia applied, in terms of section 49(6) of the IBA Act, for an exemption from the restrictions set by section 49 of the IBA Act. Primedia sought an exemption which permitted it to exercise control over three FM licences, namely K-FM, 947, and Talk Radio 702.</p> <p>17.3 On 13 March 2018 Primedia then sought to renew its Talk Radio 702 licence which was due to expire on 16 December 2018.</p> <p>17.4 In a letter 13 March 2019, the Authority informed Primedia that its renewal application in respect of Talk Radio 702 was still under consideration, and the delivery of an exemption application in terms of section 65(6) of the ECA would assist to ensure a speedy conclusion of the renewal process.</p> <p>17.5 On 20 March 2019, Primedia's attorneys of record ("ENS") addressed a letter to the Authority requesting that written reasons be provided regarding the decision that Primedia was required to make a fresh application for an exemption in terms of section 65(6) of the ECA.</p> <p>17.6 ICASA's reasons for suggesting the exemption application be made simultaneously with the application to renew the licence were set out in a letter dated 16 April 2019.</p> <p>17.7 Primedia filed review papers in the High Court on 20 June 2019, seeking declaratory and review relief on the following:</p> <p>17.7.1 Declaring that the exemption granted by the Authority to Primedia on 23 March 2006 in terms of section 49, does not cease to exist or expire upon the expiry of the commercial broadcasting licences controlled by Primedia;</p> <p>17.7.2 Declaring that, when renewing the commercial broadcasting licences, controlled by Primedia, the Authority is obliged to have regard only to the factors set out in section 11 of the Electronic</p>	

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	<p>Communications Act, 2005 (Act No. 36 of 2005) (“ECA”), and in particular may not require Primedia to re-apply for the exemption;</p> <p>17.7.3 Set aside and declaring, unlawful and invalid the decision taken by the Authority on 13 March 2019, requiring Primedia to make a fresh application for exemption in terms of section 65(6) of the ECA before the Authority will consider Primedia’s application to renew its commercial broadcasting licence in respect of Radio 702; and</p> <p>17.7.4 Directing the Authority to pay costs of the application.</p> <p>17.8 It was argued on behalf of the Authority that Council resolved on 19 February 2019 that Primedia was to be advised that its renewal applications were being considered by the Authority, and that they should apply for exemption in order for the Authority to consider the applications in total. Further, Council resolved that the exemption could not extend beyond the validity period of the licence, and that the licence remained valid until renewed.</p> <p>17.9 On 19 May 2021, judgment was granted in favour of Primedia as outlined herein below:</p> <p>17.9.1 The exemption granted by the Authority to Primedia was declared not to have ceased or expired upon the expiry of the Radio 702 licence;</p> <p>17.9.2 The decision taken by the Authority on 13 March 2018 directing Primedia to make a fresh application for exemption in terms of section 65(6) of the ECA before the Authority could consider Primedia’s renewal application was set aside, declared unlawful and irrational; and</p> <p>17.9.3 The Authority was ordered to pay the costs of Primedia, including costs of two counsel.</p> <p>17.10 On 9 June 2021, the Authority filed an application for leave to appeal the judgment delivered.</p>	

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	<p>17.11 On 2 August 2021, judgment was handed down by Judge RG Tolmay wherein she dismissed the application for leave to appeal with costs based on the following reasons:</p> <p>17.11.1 The request for the submission of an application for exemption, prior to a decision being made for the renewal of the licence, constitutes a decision;</p> <p>17.11.2 Primedia's exemption does not cease to exist upon expiry of Primedia's individual commercial FM broadcasting licences;</p> <p>17.11.3 There are no compelling reasons to grant leave to appeal.</p> <p>17.12 The LRCCC Division is of the view that the judgment was improper in that it constrains the Authority's regulatory powers.</p> <p>17.13 The judgement will have severe, and inevitable negative impacts on the current licensing regime and to licences which are currently based on exemptions.</p> <p>17.14 This means the Authority will either have no power to consider those exemptions, as they will be regarded as perpetual or will have to create extraordinary reasons to support its decision to grant limited exemptions to licensees, versus the unlimited exemptions it would have granted to other licensees such as Primedia.</p> <p>Recommendation</p> <p>17.15 It is recommended that Council:</p> <p>17.15.1 Notes the judgment dated 2 August 2021, dismissing the Authority's application for leave to appeal; and</p> <p>17.15.2 Resolve that the LRCCC Division instructs external attorneys to petition the Supreme Court of Appeal for leave to appeal against the judgment.</p> <p>Following comment was made:</p> <p>17.16 Council requested for all the information regarding this case to be circulated to Councillors, this will enable Councillors to follow all the developments of the case to date.</p>	

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No.	Action Item	Person Responsible
	Council resolved to approve the submission.	
18	<p>Settlement in the matter regarding a claim made by Two Step Trading CC (“Two Step”) against the Authority</p> <p>The purpose of the submission was to request Council to approve proposed terms and conditions of settlement in the matter regarding a claim made by Two Step Trading CC (“Two Step”) against the Authority at the Regional Magistrates Court in Pretoria.</p> <p>The Specialist: Litigation, Contracts & General Legal Support presented the item:</p> <p>18.1 The Authority embarked on a project to gather inputs from external stakeholders about service they have experienced when using ICASA facilities or interacting with ICASA receptionists at the four reception areas in Sandton, and at each of the regional offices.</p> <p>18.2 The RFQ wording was clear with regard to the work scope, specifically that the total quoted price would have to include both the costs for setting-up the nine (9) devices and monthly rentals for a period of twelve (12) months.</p> <p>18.3 Two Step’s quotation only provided the total price and eliminated the itemised billing template. The Authority interpreted the quoted total price of R96,238.80 to include the rental for all twelve (12) months, in addition to the price for setting-up the devices. Two Step would later argue on the other hand that their quotation of R96,238.80 covered only the set-up and one (1) month’s rental.</p> <p>18.4 On 14 March 2019, Two Step approached the Regional Magistrates Court in Pretoria for the following relief:</p> <p>18.4.1 Payment of a sum of R319,773.60 for Claim A;</p> <p>18.4.2 Payment of the sum of R1,745.70 for Claim B;</p> <p>18.4.3 Interest on the amounts indicated in 18.4.1 and 18.4.2 above, calculated at a rate linked to prime per annum, compounded monthly from 11 October 2018 to the date of payment; and</p> <p>18.4.4 Costs of suit.</p>	<p>CEO/ Acting Executive: LRCCC</p>


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No.	Action Item	Person Responsible
	<p>18.5 Following consultations by the Legal, Risk and CCC Division (“LRCCC”) with the Supply Chain Management (“SCM”) unit, it emerged that the Authority had sent only an email attaching a purchase order to Two Step, and, based on the purchase order, the devices were delivered to the Authority before a written contract was prepared and signed.</p> <p>18.6 On or about 22 March 2019, Council resolved that the Authority should defend the legal action instituted by Two Step.</p> <p>18.7 On 18 June 2021, the LRCCC received a settlement offer from Two Step’s legal counsel, in terms of which Two Step proposes that they be offered the following amounts in full and final settlement of their claim:</p> <p>18.7.1 R 76, 838.40 for set-up costs;</p> <p>18.7.2 R121,467.60 for six (6) months rental at R 20,244. 60 per month;</p> <p>18.7.3 R1,745.70 for damages to equipment; and</p> <p>18.7.3 R75,000.00 for legal costs.</p> <p>18.8 The LRCCC proceeded and instructed Gildenhuis Malatji Attorneys (“GMA”) as the Authority’s external attorneys in the matter. GMA reverted and advised that the Authority should consider tendering settlement to the amount of R76,838.40 for installation costs of the assets and R1,745.70 for damage to the equipment. Further, GMA was of the view that the offer will be more compelling if the Authority would also offer costs on a party-to-party scale.</p> <p>18.9 The cumulative legal fees to date incurred by the Authority defending the legal action, are R73,414.01. The LRCCC has considered the fact that the cumulative legal costs may soon exceed the settlement amount recommended by GMA. The LRCCC has also considered that, given the fact that there is no valid contract between the parties, the merits do not favour the Authority if this matter is to proceed in court. It was also iterated that, despite the LRCCC having initially recommended that the Authority should defend the legal action, as the case progresses and more information becomes</p>	

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No.	Action Item	Person Responsible
	<p>available, GMA has advised, based on its assessment, that the merits of the case are not in favour of the Authority.</p> <p>18.10 Contrary to persisting to oppose a losing battle, settling this matter sooner than later, would not amount to fruitless and wasteful expenditure, as the Authority will be in a position to show derived benefits from the settlement.</p> <p>18.11 If the matter is not settled sooner, it is inevitable that the cumulative legal bill will increase beyond the proposed settlement amount, without any guarantee that the Authority could at any point be able to recover the amounts.</p> <p>Recommendation</p> <p>It is recommended that:</p> <p>18.12 Council notes the submission as well as the GMA letter dated 2 July 2021;</p> <p>18.13 Council approves that Two Step be offered an amount of: (a) R76,838.40 for installation costs; (b) R1,745.70 for damages to the equipment; and (c) costs on a party-to-party-scale as to be determined by a cost consultant (if Two Step insists on same), in full and final settlement of its claim against the Authority; and</p> <p>18.14 That the LRCCC Division be authorised to instruct GMA to enter into settlement negotiations with Two Step, and to attend to all tasks incidental thereto.</p> <p>Following comment was made:</p> <p>18.15 Clarity was sought on what the possible audit finding will be reported on by the Auditor General regarding the settlement.</p> <p>18.16 Council noted the series of supply chain management deficiencies, that resulted in the litigation process being instituted.</p> <p>18.17 Clarity was sought on what is meant by party-to-party costs.</p> <p>18.18 A brief indication was sought on the kind of legal stop-loss strategy is used by the Authority, when determining whether a matter will defended.</p>	

No.	Action Item	Person Responsible
	Council resolved to approve the submission.	
19	<p>General</p> <p>19.1 Councillors were requested to make inputs to the media statement relating to the passing of the Authority's former CEO.</p> <p>19.2 Councillors should be on standby for meetings regarding the MTN and Telkom settlement discussions, and the Disaster Management Committee recommendations.</p> <p>19.3 Councillor [REDACTED] requested for the Type-Approval Regulations public hearings schedule to be approved via a Round-Robin Resolution.</p> <p>19.4 The Acting Corporate Secretary, notified Councillors that their MTN gifts were ready for collection. It was further noted that to date an amount of [REDACTED] has been collected for [REDACTED] [REDACTED] arewell gift.</p>	
20	<p>Closure</p> <p>The Chairperson thanked all present at the meeting and closed the meeting at 11:37</p>	Chairperson
21	Date of next meeting: TBA	Secretariat

Signed:  _____

(Chairperson)

Date: 12 October 2021