



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY MEETING OF COUNCIL		
Date	17 May 2022	
Time:	08:00	
Venue:	Microsoft Teams	
Present	████████████████████	Chairperson
	██████████	Councillor
	████████████████	Councillor
	██████████	Councillor
	████████████████████	Councillor
By Invitation	████████████████	CEO
	████████████████	CFO
	████████████████████	CAE
	████████████████	Corporate Secretary
	████████████████	Secretariat Officer
	████████████████	Secretariat Officer
	██████████	Secretariat Officer
Partial Attendees	██████████████	Executive Engineering and Technology
	████████████████	Manager Broadcasting Frequency Coordination
	██████████	Executive Licensing and Compliance
	██████████	Executive Policy Research and Analysis
	██████████████	Specialist Regulatory and Legislative Drafting
	████████████████	Radio Frequency Specialist
	██████████	CCC Coordinator
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>The following apology was noted:</p> <p>1.2. Cllr ██████ joined the meeting but would leave at 10:00 to attend the “Being a Director training” with the Institute of Directors.</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.</p>	All
4.	<p>Minutes of Council: 22 March 2022</p> <p>The minutes were adopted by Council.</p>	Council
4.2	<p>Minutes of Council: 28 March 2022</p> <p>The minutes were adopted by Council.</p>	Council
5.	Matters Arising	CEO




No.	Action Item	Person Responsible
	The submission was deferred to the next meeting of Council.	
6.	International Engagements Report on CRASA AGM to be dealt with under item D2.	CEO/ Exec: Corporate Services
7.	Licensing of IMT (“Standing Item”) The Project manager presented the submission. <ul style="list-style-type: none"> 7.1. The purpose of this submission was to recommend that Council approves the licensing of the IMT800 Unsold Lot of 10 MHz and the detailed project plan, for the second phase of the licensing of the available IMT spectrum. 7.2. Pursuant to the licensing of the International Mobile Telecommunications (IMT) spectrum litigation between Independent Communications Authority of South Africa (“the Authority”) and Telkom, on 08 April 2022 the matter was settled of Court. 7.3. As part of the agreed settlement between the two parties, the Authority committed to issue an Information Memorandum (“IM”) by no later than 30 June 2022 for the licensing of: <ul style="list-style-type: none"> 7.3.1 the unsold sub-1 GHz Lot from the IMT spectrum auction, and 7.3.2 any other IMT spectrum that is presently available for licensing except for the spectrum currently set-aside for the Wireless Open Access Network (WOAN). 7.4. The IM, amongst others, will consider the spectrum holdings emanating from the recently concluded auction, including the imbalances in sub-1 GHz spectrum, and the impact of the outcome of the auction on competition in the mobile market. 7.5. The Authority aims to conclude the licensing process by the end of March 2023. 7.6. The Licensing of IMT Spectrum Council Committee (“the Committee”) formulated the detailed Project Plan in the quest of 	Cllr ██████



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	<p>implement the terms of agreement reached between the Authority and Telkom.</p> <p>7.7. The Authority is also in the process of seeking expert assistance in relation to the licensing of IMT process. The process is at the advanced stage to be concluded with our lawyers.</p> <p>7.8. The Project Plan is to be updated upon having the service provider on board. However, the Committee commits to meeting the immediate deadline of delivering the IM for issuance before end of June 2022.</p> <p>7.9. As part of the Planning Phase of the project, the Committee assessed other bands that are ready for the immediate licensing with assistance of the Licensing and Compliance Division and Engineering and Technology Division.</p> <p>7.10. Various IMT spectrum bands were assessed, and the Committee came to the conclusion of recommending the licensing of the unsold Lot of IMT800 from the previous process. Other bands are not available immediately for licensing since they are still subjected to the consultation process relating to the Radio Frequency Assignment Plans.</p> <p><u>Recommendation to Council:</u></p> <p>7.11. The Committee recommends approval of the licensing of the IMT800 Unsold Lot of 10 MHz, and the detailed project plan for the second phase of the licensing of the available IMT spectrum.</p> <p><u>The following comments were made:</u></p> <p>7.12. Council expressed that there is a commitment that the Authority should publish an IM by the end of June 2022, which includes all available spectrum. With the above in mind, Council inquired if it would not be prudent to publish a statement or a notice notifying stakeholders that the Authority wishes to ascertain and understand the views of stakeholders, being that the only available spectrum at the current stage is Lot 9.</p>	



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	<p>7.13. The Committee agreed with the above (7.12) suggestion made by Council, and further commented that a Roadmap or guidance guidelines can be published to solicit inputs from stakeholders.</p> <p>7.14. Council raised the point that the IMT Roadmap process related to the Frequency Migration process. Council requested that as the Committee will be in the process of notifying the public, there should be an alignment between the two processes.</p> <p>7.15. Council inquired about the reason preventing the Authority from including the band as part of Lot 9 for purposes of the Auction.</p> <p>7.16. Council resolved that the Committee should meet, and after developing a submission, hold an IMT Spectrum SteerCo to have thorough engagement.</p> <p>The submission was noted.</p>	
8.	<p>Establishment of a Council Committee on the review of the Consumer Advisory Panel Regulations of 2017 as amended</p> <p>8.1. The purpose of this submission was to request Council to approve a Council Resolution on the establishment of a Council Committee that will be responsible to review the Consumer Advisory Panel (CAP) Regulations as published in Government Gazette No. 40725 of 28 March 2017.</p> <p>8.2. Council recommended that Councillor L Mkumatela, and Councillor Charley Lewis be the Councillors responsible for the review of the current CAP Regulations as published in Government Gazette No. 40725 of 28 March 2017.</p> <p>8.3. A Council Resolution has been prepared for Council to approve so that the Committee can commence its work on the review process.</p> <p><u>Recommendation to Council:</u></p>	<p>Cllr </p>



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	<p>8.4. It was recommended that Council approve a Council Resolution on the establishment of Consumer Advisory Panel (CAP) Regulations Review Committee.</p> <p>The submission was approved.</p>	
<p>9.</p>	<p>Report on the outcomes of the 11th Annual General Meeting of the Communications Regulators' Association of Southern Africa</p> <p>The head of the delegation presented the submission.</p> <p>9.1 The purpose of this submission was to report to Council and inform the CEO and Executive: Corporate Services on the outcomes of the 11th Annual General Meeting (“AGM”) of the Communications Regulators’ Association of Southern Africa (“CRASA”) which was held in Luanda, Angola from the 31st of March to 1st April 2022.</p> <p>9.2 CRASA is an Association of Information and Communications Technologies (“ICT”) and Postal regulators in Southern Africa established as a specialised agency of Southern African Development Community (“SADC”) pursuant to the SADC Protocol on Transport, Communications and Meteorology.</p> <p>9.3 The main objective of CRASA is to harmonise the Postal and Information Communications and Technologies (ICT) regulatory environment in the SADC region in order to improve the Postal and ICT business environment and investment climate in SADC.</p> <p>9.4 The AGM is the supreme decision-making body of the Association. It meets once a year to, inter alia, receive and approve reports of the Specialized Committees, annual action plans, the annual report, and audited accounts as well as the annual budget for the Association.</p> <p>9.5 The 11th AGM of CRASA was held in Luanda, Angola from the 31st March to 1st April 2022. Delegates could attend either physically and or online. The South African delegation made up of ICASA officials was constituted as follows:</p> <p>9.5.1 Councillor [REDACTED] (Head of Delegation)</p> <p>9.5.2 Councillor [REDACTED] (online attendance)</p>	<p>Cllr [REDACTED]</p>



No.	Action Item	Person Responsible
	<p>9.5.3 [REDACTED]</p> <p>9.5.4 [REDACTED]</p> <p>9.5.5 [REDACTED]</p> <p>9.5.6 [REDACTED]</p> <p>9.5.7 [REDACTED]</p> <p>9.5.8 [REDACTED]</p> <p>9.6 The AGM approved the consolidated country report for the 2021 financial year. The report provides an authoritative source of data about the evolution of the Telecommunications Sector as well as the availability and usage of ICTs, Postal and Broadcasting services in the SADC Region.</p> <p>9.7 The AGM approved the report for the Economic Regulation Committee. The report includes matters relating to the Terms of Reference for the Committee; Report on Broadband Pricing; Motivational Paper on removal or reduction of taxes on SADC ICT Sector; and the update on SADC Roaming Project.</p> <p>9.8 With respect to the broadband speed, the AGM resolved to recommend to the ICT Ministers the target of 5Mbps (broadband download speed) minimum by 2025 instead of 1Mbps. The measurement will start from 2025 to accommodate countries which are still at the lower speeds. South Africa will need to take into account the recommended broadband speed in its planning and regulation making processes.</p> <p>9.9 The SADC Roaming Project: The AGM resolved to inform the SADC Secretariat and communicate the challenges being met in the implementation of the cost-based roaming tariff directive by the SADC ICT Ministers.</p> <p>9.10 The report by the Electronic Communications Committee was approved with amendments proposed by South Africa to reflect the current licensing status of the 700 MHz and 800MHz bands in South Africa based on the spectrum auction which took place in March 2022.</p> <p>9.11 The AGM approved the CRASA Operational Plan and Calendar of Events for the 2022/23 FY. The Operational Plan covers five main areas of responsibility in CRASA, namely, Administrative,</p>	



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	<p>Corporate Governance, Consumer, Electronic Communications and Postal matters.</p> <p>9.12 South Africa must take note of the CRASA calendar of events, in developing its calendar of events for the 2022/23 FY, in particular, the meetings of the CRASA specialised committees. South Africa must also take into account CRASA's Operational Plan in its human resource allocation for the 2022/23 FY to ensure its interests are considered in the work of CRASA.</p> <p>9.13 The AGM approved the report for the Finance and Audit Committee. The report includes the internal audit report & audit plan, risk register, management accounts, audited financial statements and budget for 2022/23 FY.</p> <p>9.14 South Africa is currently the chairman of the Finance and Audit Committee until 2023 – deputised by Namibia. South Africa should continue to allocate human resources to perform this role to ensure the objectives of the Committee are met.</p> <p>9.15 The AGM approved the report of the Human Resource and Development Committee. Eswatini is currently the chairman of the Committee deputised by South Africa. The report includes the update on the recruitment of the CRASA Head of Electronic Communications, approval of COLA (at 4.9%) for the CRASA Secretariat staff and the CRASA IT and Communications Policy.</p> <p>9.16 The AGM approved the report of the Legal and Policy Committee. The report includes the preliminary assessment of legal and regulatory implications of the African Continental Free Trade Area (AfCFTA) on the ICT Sector in SADC; a comprehensive review of the CRASA Constitution; and the MoU between CRASA and WITS University.</p> <p>9.17 The proposed amendments to the CRASA Constitution seek to, inter alia, bring the Constitution in line with the Association's current environment and the need to address some inherent deficiencies so as to provide for perpetual succession of the Association; expand membership to include governmental departments responsible for postal and ICT regulation; and provide for postponement and cancellation of meetings due to</p>	



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	<p>force majeure. A notice will be sent to the members to submit their comments to CRASA.</p> <p>9.18 The AGM approved the report on the implementation of the CRASA Strategic Plan for the first four (4) years of the strategic planning period (i.e., 2018-2019, 2019-2020, 2020-2021 and 2021-2022). It was noted that of the total 180 planned projects for the four-year period, 149 were fully implemented and completed within the planned implementation timeframe, representing 83%.</p> <p>9.19 It was agreed that the CRASA Strategic Planning Task Team (“CSPTT”) must be reconstituted and tasked to commence the development of the CRASA Strategic Plan for the period 2023-2028. The Task team must include the Chairpersons of all Specialised Committees, the Secretariat and other Members that the Executive Committee (EXCO) may appoint.</p> <p>9.20 South Africa, through ICASA, should note that its human resources will be expected to form part of the CSPTT and should therefore, take this aspect into account in developing its human resource allocation plan for the 2022/23 FY.</p> <p>9.21 In line with the CRASA Manual of Procedure and CRASA Constitution, the CRASA Executive Committee for the 2022/23FY was elected as follows:</p> <p style="padding-left: 40px;">9.21.1 Chairperson: Angola; 9.21.2 First Vice Chairperson: Zimbabwe; 9.21.3 Second Vice Chairperson: DRC; 9.21.4 Treasurer: Botswana</p> <p><u>Recommendation to Council:</u></p> <p>9.22 It was recommended that Council take note of the report of the 11th AGM of CRASA which was held in Luanda, Angola from the 31st March to 1st April 2022.</p> <p><u>The following comments were made:</u></p> <p>9.23 Council inquired whether the CRASA Home and Away projected has yielded anything.</p>	



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	<p>9.24 The attendees informed Council that the project has yielded results but noted further that there are certain issues that are out of the control of CRASA, such as taxes in other countries for cross boarder communications.</p> <p>9.25 Council requested that the following reflections be taken to the next AGM, and that, an association like CRASA should identify five key proof points that need to be achieved and a way forward on how to go about to achieve those points.</p> <p>The submission was noted.</p>	
10.	<p>Recommendation by CCC to Council in the matter between Licensing and Compliance Division of ICASA and SABC</p> <p>The CCC Council representative presented the submission.</p> <p>10.1. The purpose of this submission was to table the recommendation of the CCC in the matter between Licensing and Compliance Division versus SABC.</p> <p>10.2. On 13 January 2022, the Complainant (Licensing and Compliance Division) referred the above-mentioned matter to the CCC for investigation in terms of section 17B(a) of the ICASA Act No.13 of 2000.</p> <p>10.3. The Complainant alleged that SABC’s radio stations being Phalaphala FM and Metro FM have, during the 2021 municipal election period contravened regulation 6(14) of the Municipal Elections Party Elections Broadcasts and Political Advertisements Amendment Regulations of 2021 which provides that, “A broadcasting service licensee that broadcasts PA must ensure that all PA broadcasts are clearly identified through a standard pre-recorded introductory and concluding message (top and tail) disclaimer.” The allegations of contravention are outlined as follows:</p> <p>10.3.1 It is alleged that on 19 October 2021, at 8h52 during the programme “Vha Ndilani”, Phalaphala FM broadcasted the Economic Freedom Front (“EFF”)</p>	Cllr [REDACTED]



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	<p>Political Advertisement (“PA”), without a tail disclaimer.</p> <p>10.3.2 It is alleged that on 19 and 20 October 2021 respectively, at 8h52 during the programme “Morning Flava”, Metro FM broadcasted the Democratic Alliance (“DA”) PAs without tail disclaimers. Furthermore, during the programme “Kings Suite”, Metro FM broadcasted an EFF Party Election Broadcast (“PEB”) for the Economic Freedom Fighter (“EFF”) at 16h12 without a tail disclaimer. However, it must be noted that Metro FM did not form part of the SABC radio stations to broadcast PEBs.</p> <p>10.3.3 The CCC heard oral arguments from both parties on 31 January 2022.</p> <p><u>Findings of the CCC:</u></p> <p>10.4. The SABC is found to have been negligent when it breached regulation 6(14) of the Municipality Elections Party Election Broadcasts and Political Advertisements Regulation of 2021, through Phalaphala FM and Metro FM in October 2021, in that it failed to ensure that all the PA broadcasts are clearly identified through a standard pre-recorded introductory and concluding message (top and tail) disclaimer.</p> <p><u>Recommendation:</u></p> <p>10.5. The CCC recommends that Council issues the following order in terms of section 17E (2) of the ICASA Act:</p> <p>10.5.1 The Licensee is directed to desist from any further contravention of the above-mentioned Regulations; and</p> <p>10.5.2 The licensee is directed to take the following remedial action:</p> <p>10.5.2.1 within ninety (90) calendar days from the date of issue of this order, SABC is to submit to Council of ICASA a report setting out, among</p>	



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	<p>others, a brief technology readiness report, articulating the technology operations plans, system preventative maintenance and how they were implemented before the election period.</p> <p>10.5.2.2 that the two (2) radio stations upgrade their hardware and software. This must be followed by a dry run on the system's operation well before the commencement of the election period to ensure that it is full proof.</p> <p>10.5.2.3 The CCC recommends that each station, that is, Phalaphala FM and Metro FM, broadcasts a public apology during the first week after this order is issued.</p> <p>10.5.2.4 In respect of Phalaphala FM, the apology is to be broadcast once per day for five (5) consecutive days as its first item on its news service between 07h00 and 20:10 - in Venda and then in English in the same News Bulletin. On the first two (2) days the broadcast must take place in the first newscast after 07h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest forty-eight (48) hours before the broadcast. The broadcast may not be accompanied by any background music or sounds, and the item must be read formally by the Station Manager or his or her representative, who must declare on air that he or she is the Station Manager or acting on behalf of the Station Manager.</p> <p>10.5.2.4 In respect of Metro FM the apology is to be broadcast in English once per day for five (5) consecutive days as its first item on its news service between 07h00 and 20:10. On the first two (2) days the broadcast must take place in the first newscast after 07h00. The</p>	



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	<p>times of the broadcast must be notified by email to the CCA of ICASA at the latest forty-eight (48) hours before the broadcast. The broadcast may not be accompanied by any background music or sounds, and the item must be read formally by the Station Manager or his or her representative, who must declare that he or she is the Station Manager or acting on behalf of the Station Manager.</p> <p>The apology must be phrased thus:</p> <p><i>“The Independent Communications Authority of South Africa has found that this station was negligent in not having abided by the Municipal Elections Regulations 2021. This station broadcast Political Advertisements without adding a statement which clearly identifies Political Advertisements as such.</i></p> <p><i>This is in conflict with the ICASA Election Regulations which require such statements to be made before and after the advertisement. This station further extends its apology to ICASA and to its listeners for having committed these contraventions”.</i></p> <p>An electronic copy of each broadcast stating the date and the time of the broadcast, must be sent to the CCA at ICASA by email within forty-eight (48) hours from the last broadcast in the said five (5) days.</p> <p>10.5.2.5 A fine of fifty thousand rands (R50 000) of which thirty thousand rands (R30 000) is suspended until after the next Municipal Elections must be paid to ICASA within ninety (90) calendar days from when this judgment is issued. The CEO of ICASA or his nominee must be copied with proof of</p>	



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	<p style="text-align: center;">payment within twenty-four (24) hours from when the payment was made.</p> <p><u>The following comments were made:</u></p> <p>10.6. Council inquired if the CCC was given proper context of the circumstances through which the elections were conducted. The Authority had allocated slots at the eleventh hour, the Authority did not follow the requirements of the Regulations on how slots should be given. Council inquired to what extent the CCC was made aware of the reality.</p> <p>10.7. Council expressed that the Authority should not be seen as punishing towards the Licensees, which tried to do the utmost best under trying circumstances, caused by the uncertainty if the elections would proceed.</p> <p>10.8. The CCC representatives informed Council that issues such as the COVID-19 pandemic, and the delay in the pronouncement of the date of the elections were considered. The CCC assessed each of the matters separately, and with the SABC, the fact that the public broadcaster has previously took part in the elections was a contributing factor towards the finding reached. The CCC held that the stations should prejudice any other parties and the Top and Tail disclaimers prevent the prejudice.</p> <p>10.9. Council expressed that should it adopt the judgment as it is, and that it should fully internalise the chaos that was taking place at the time. Council further expressed that based on what the law says, the CCC has fully done its work and obligation, however Council was of the view that the CCC did not live through that particular crisis that was experienced by the Authority and the Licensees.</p> <p>10.10. Council resolved that the Senior Manager ICT Licensing services and the Manger Broadcasting Compliance should at the next meeting of Council narrate about the process in their capacities as the Project leaders on the Election matter, and to further enrich the discussion of Council before taking a decision. Council further resolved that the CCC Coordinator be invited during the next session.</p>	



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	<p>10.11. Council was of the view that there might be mitigating circumstances that should be considered on behalf of the licensees.</p> <p>The decision was deferred to the next meeting of Council.</p>	
11.	<p>Recommendation by CCC To Council in the matter between Licensing and Compliance of ICASA and Soshanguve Community Radio</p> <p>The submission was deferred to the next meeting of Council.</p>	Cllr [REDACTED]
12.	<p>Recommendation by CCC to Council in the matter between Licensing and Compliance of ICASA and you FM</p> <p>The submission was deferred to the next meeting of Council.</p>	Cllr [REDACTED]
13.	<p>Recommendation by CCC to Council in the matter between the Licensing and Compliance Divisions of the ICASA and Radio Overberg</p> <p>The submission was deferred to the next meeting of Council.</p>	Cllr [REDACTED]
14.	<p>Recommendation By CCC To Council in the Matter between the Licensing and Compliance Divisions of The ICASA and Campus Bay FM</p> <p>The submission was deferred to the next meeting of Council.</p>	Cllr [REDACTED]
15.	<p>Recommendation by CCC to Council in the matter between Richard Cock and Classic FM</p> <p>15.1. The purpose of this submission was to table the recommendation of the Complaints and Compliance Committee (“CCC”) in the matter between Richard Cock (“Complainant”) and Classic FM (“Respondent”).</p> <p>15.2. On 07 October 2021, the Complainant lodged a complaint with the CCC against the Respondent for the following allegations of contravention: That-</p>	Cllr [REDACTED]



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	<p>15.2.1 The Respondent has contravened Clause 5 of its Licence Conditions. Clause 5 states as follows: “the Licensee shall provide 50% Classical Music and 50% Old School and R&B Music”.</p> <p>15.2.2 The Respondent alleged contravention is found in the original complaint which was lodged by Mr Richard Cock. The report which informs the complaint and alleged contravention is based on the review which the Complainant conducted over a period of one week reviewing Classic FM’s line-up. He gives an example of the week of Monday 23 to Sunday 29 August, where he says that the daily percentages of classical music played ranged from 6.76% on Monday 23 August 2021 to 18% on Saturday 28 August 2021, with an average of 11.01% overall for the week, measured over a seven-day period.</p> <p>15.3. The hearing of the CCC to hear oral arguments from the parties was held on 10 March 2022.</p> <p>15.4. The CCC made the following finding:</p> <p>The allegation that the Respondent has failed to comply with its licence conditions in that it does not play 50% Classical Music during the broadcast period, has no merits and cannot be upheld. The complaint as appears on the Charge Sheet is, therefore dismissed.</p> <p><u>Recommendation to Council:</u></p> <p>15.5. Accordingly, no order is recommended by the CCC to the Authority.</p> <p><u>The following comments were made:</u></p> <p>15.6. Council inquired about the status of compliance, and whether there are any records that the Authority investigated regarding compliance by Classic FM.</p>	



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	<p>15.7. The CCC representative informed Council that there was no involvement from the CCA since they were not part of the case, and the CCC did not get into the discussion on of whether there was compliance.</p> <p>15.8. Council raised that the evidence and recordings were not submitted on the record. Council further requested that there be future monitoring exercises.</p> <p>The submission was approved.</p>	
16.	<p>Legal Opinion on the Chairperson and Councillors' Remuneration Determination: Remuneration of Public Office Bearers Act</p> <p>The Executive Legal Risk and CCC presented the submission.</p> <p>16.1. The purpose of this submission was to provide Council with an opinion from senior Counsel on the determination of remuneration of Chairperson and Counsellors, for noting.</p> <p>16.2. ICASA has for years applied the Department of Public Service Administration (DPSA) prescripts in the payment of Cost of Living (COLA) to the Chairperson and other councillors. Each year the DPSA would issue a directive on COLA determination for public servants after following bargaining process and determination by Minister of Finance.</p> <p>16.3. The above process was followed on the basis of letters issued to ICASA by the then Minister of Communications, Dr Matsepe-Casaburi. In that letter, the then Minister of Communication stated that ICASA Chairperson is deemed equivalent to DG level and Councillors are deemed equivalent to DDG level.</p> <p>16.4. As of the 2019-20 and 2020-21 financial years, the Commission on Remuneration of Public Office Bearers has, in making determination of remuneration of Office Bearers, included ICASA Chairperson and Councillors in its recommendations to the President. As a result, the President has as part of his determination of remuneration of public</p>	CEO/ Exec: LRCCC



No.	Action Item	Person Responsible
	<p>Office Bearers specifically stated what ICASA Chairperson and Councillors' COLA adjustment should be.</p> <p>16.5. An opinion from Senior Counsel was sought to clarify a position which ICASA should follow in making a determination of the Chairperson and Counsellors' remuneration.</p> <p>16.6. Section 5 of the ICASA Act, provides for the constitution of and appointment of Councillors to Council. The Council consists of seven councillors appointed by the President on the recommendation of the National Assembly.</p> <p>16.7. The term of office for the Chairperson is a period of five (5) years while other Councillors are appointed for a period of four (4) years. The Chairperson and other Councillors are eligible for re-appointment for one additional term of five (5) and four (4) years, respectively.</p> <p>16.8. Every Councillor serves in a full-time capacity to the exclusion of any other remunerative employment, occupation or office which is likely to, interfere with the exercise by any such Councillor of his or her functions in terms of this Act or the underlying statutes; or create a conflict of interests between such employment, occupation or office and his or her office as Councillor.</p> <p>16.9. The change brought about by the Amendments Act, 2014, meant that the power to make the remuneration determination no longer lies with the Minister but now lies with the President.</p> <p>16.10. The opinion from Senior Counsel concludes as follows:</p> <p>16.11.1 The power to make a determination on the remuneration of ICASA's Chairperson and councillors lies only with the President.</p> <p>16.11.2 This power of the President emanates from s10 of the ICASA Act, which read together with the Independent Commission Act, gives effect to s219(5) of the Constitution, as this is the national legislation that establishes the framework for</p>	



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	<p>determining the salaries, allowances, and benefits of members of ICASA.</p> <p>16.11.3 The proclamation of the Presidential Determination was lawful, and other than the three-month period of inapplicability, was in line with the powers conferred upon the President by s10 of the ICASA Act.</p> <p>16.11.4 The ICASA Act no longer empowers the Minister to make a determination on remuneration of the Chairperson and councillors following the amendment to s10 on 1 April 2019 occasioned by the Amendment Act. Therefore, the issue is not that the President's powers "trump" the powers of the Minister. The Minister has no powers at all in this regard.</p> <p>16.11.5 The Independent Commission Act applies in the determination of the remuneration of ICASA's Chairperson and councillors by virtue of s10(1)(a) of the ICASA Act which expressly provides that the President must take into consideration the recommendations of the Independent Commission. Such recommendations are made pursuant to the powers conferred on the Independent Commission by the Independent Commission Act.</p> <p>16.11.6 As of 1 April 2019, ICASA is bound by determinations properly made by the President in accordance with s10 of the ICASA Act and not that of the erstwhile Minister; the only proviso being that the salary of the councillors may not be reduced, nor may their allowances and benefits be adversely altered, during their term of office.</p> <p>16.11.7 The President's determination in respect of ICASA is a 0% increment, thus ICASA's current Council does not have the power to pass a resolution increasing the current remuneration scheme from the "lower end of the salary scale" to a "mid-point level".</p>	



No.	Action Item	Person Responsible
	<p><u>Recommendation to Council:</u></p> <p>16.11. It was recommended that Council take note of the opinion by senior Counsel on the determination of remuneration of the Chairperson and Councillors.</p> <p><u>The following comments were made:</u></p> <p>16.12. Council inquired with regards to the legal opinion that Section 10 of the ICASA Act was amended and the CEO stated that Remuneration of Office Bearers Act was amended, and Council expressed confusion over which amendment trumps the other.</p> <p>16.13. Management informed Council that Parliament will be amending the ICASA Act using the Remuneration of Office bearers Act. Management further informed Council that the updated ICASA Act pdf document will be shared with Council, and further that the pocket size Act will be ordered and shared with Council.</p> <p>The submission was noted.</p>	
17.	<p>Legal Opinion on the Dispute between the National Association of Broadcasters and the Broadcasting Complaints Commission of South Africa</p> <p>The Executive Legal Risk and CCC presented the submission.</p> <p>17.1. The purpose of this submission was to:</p> <p>17.1.1 provide Council with a synopsis of a legal opinion in relation to the dispute between the National Association of Broadcasters of South Africa (“NAB” or “NABSA”) and the Broadcasting Complaints Commission of South Africa (“BCCSA”); and</p> <p>17.1.2 request Council to consider the legal opinion and to approve a draft letter to the BCCSA.</p>	CEO/ Exec: LRCCC



No.	Action Item	Person Responsible
	<p>17.2. On 5 January 2022 the Authority, through the Legal Risk and CCC division requested a legal opinion from Mkhabela Huntley Attorneys (“MHA”) in respect of the following questions:</p> <p>17.2.1 Does the Authority have a legal basis to intervene in the dispute between the BCCSA and NABSA considering the provisions of section 54 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“ECA”) and the fact that there is an award by the Arbitration Appeal Panel against the BCCSA?</p> <p>17.2.2 If the answer to the question above is in the affirmative, what process must ICASA undertake in order to resolve the dispute?</p> <p>17.2.3 Does the NABSA have the authority to amend the constitution of the BCCSA – in other words, can the Authority accept an application from the NABSA to amend the constitution of the BCCSA?</p> <p>17.3. The above questions arose due to the following events:</p> <p>17.3.1 A dispute arose between the NABSA and the BCCSA in relation to the independence of the BCCSA from the NABSA, specifically pertaining to whether members of the NABSA are also members of the BCCSA. An ancillary matter arising from this dispute is whether the NABSA can amend the Constitution of the BCCSA;</p> <p>17.3.2 The BCCSA is an independent and impartial tribunal established by the NABSA to adjudicate on complaints received on the content of broadcasters;</p> <p>17.3.3 The BCCSA, through its letter to ICASA dated 19 November 2020, alleges that during 1995, the Independent Broadcasters Association (“IBA”) recognised the BCCSA in terms of section 56(4) of the now repealed Independent Broadcasters Act of 1995 (“IBA Act”). The BCCSA states that the recognition order required a total separation between the NABSA and BCCSA, except for funding and supply of offices, which had to be provided by NABSA. Further, the</p>	



No.	Action Item	Person Responsible
	<p>NABSA was no longer permitted to have its representatives elected to the BCCSA;</p> <p>17.3.4 To seek clarity on the dispute, the NABSA sought a legal opinion on various issues relating to the dispute. The opinion concluded that the BCCSA is not independent of the NABSA. In light thereof, the NABSA issued an urgent application, in terms of which it sought an order declaring that the BCCSA is a voluntary association; that the NABSA members are members of the BCCSA; and that NABSA may amend the Constitution of the BCCSA;</p> <p>17.3.5 The court application was, by agreement of the parties, referred for arbitration. In the arbitration, the arbitrator found in the favour of the BCCSA. However, this decision of the arbitrator was overturned on appeal by the arbitration appeal tribunal, which held that broadcasters were members of the BCCSA and that they could amend the Constitution of the BCCSA. Considering the above, BCCSA seeks ICASA's intervention by appointing a committee to investigate its concerns. In addition, BCCSA requires confirmation by ICASA of the applicability of the resolution taken by IBA in 1995, that recognised BCCSA as an independent body from the NABSA.</p> <p>17.4. In summary, after consideration of all information provided and the questions posed by ICASA, MHA advised that:</p> <p>17.4.1 The Authority can only intervene in the dispute between the NABSA and the BCCSA only if there is an allegation that the provisions of section 54(3) of the ECA are no longer being complied with by any or all the broadcasting service licensees, the NABSA and the BCCSA.</p> <p>17.4.2 In deciding whether it should intervene, the Authority must first establish if there is a prima facie case of non-compliance by the NABSA with the provisions of section 54(3) of the ECA. If it is so satisfied, the Authority could consider instituting an enquiry into the matter. The</p>	



No.	Action Item	Person Responsible
	<p>Authority is empowered by the ICASA Act to conduct an inquiry into any matter regarding the achievement of the objects of the ICASA Act or the underlying statutes, and the exercise and performance of its powers, functions, and duties in terms of the ICASA Act or the underlying statutes. The arbitration award would not constrain the Authority's ability to intervene.</p> <p>17.4.3 The general legal position is that voluntary associations are bound to their constitutions. On assumption that the 1995 Constitution remains applicable, the NABSA cannot validly amend the constitution of the BCCSA. That power vests solely on the BCCSA. Insofar as the NABSA may have purported to amend the 1995 Constitution without following its prescripts, such amendment will be unlawful.</p> <p>17.5. The Authority cannot intervene in the dispute between NAB and BCCSA unless there is a prima facie case of contravention of section 54 (3) of the ECA. The Authority must request the BCCSA to put forward a case on contravention on the part of NAB and the BCCSA must confirm which of the two constitutions is applicable with the view to determine whether and if there is still compliance by the NAB with the provisions of section 54(3) of the ECA. Pending the final determination thereof, the Authority cannot approve the amendment of the BCCSA constitution, if it is so requested.</p> <p><u>Recommendation to Council:</u></p> <p>17.6. It was recommended that Council considers the legal opinion and approves the draft letter to the BCCSA (which letter will be vetted by the attorneys on record, MHA).</p> <p><u>The following comments were made:</u></p> <p>17.7. Council inquired if the Authority was aware of what has changed, in as far as how NABSA and BCCSA used to work, that would cause the interest to change the <i>status quo</i>.</p> <p>17.8. Council further requested the understanding of the process that has been undertaken since the letter was received in 2020.</p>	



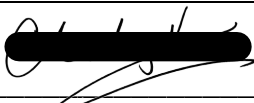
No.	Action Item	Person Responsible
	<p>17.9. Management informed Council that the approach of the then ICASA as it was still the IBA recognised the BCCSA as an independent body from the NABSA, and further that the NABSA does not have power to amend its Constitution. With the current legislative mandate and powers, the ICASA Act does not allow the Authority to make that determination.</p> <p>17.10. Council expressed that the opinion is clear that the Authority may not intervene unless there is a dispute. Council inquired whether a dispute being reported would allow the Authority to intervene.</p> <p>17.11. Management informed Council that the Authority will be allowed to intervene if one of the parties will claim contravention of the EC Act. If the contravention does not exist in terms of Section 54 of the ECA, the Authority will not be allowed to intervene.</p> <p>17.12. Council resolved that the decision making be deferred to the next meeting.</p> <p>The decision was deferred to the next meeting.</p>	
18.	<p>ICASA submission on the South African Post Office SOC Ltd Bill, 2021</p> <p>The Executive Legal Risk and CCC presented the submission.</p> <p>18.1. The purpose of this submission was for Council to consider and approve the Authority’s written submission to the Department of Communications and Digital Technologies (“DCDT”) on the South African Post Office SOC Ltd Bill, 2021 (“the SAPO Bill) published in the Government Gazette¹ on 20 April 2022.</p> <p>18.2. On 20 April 2022, the Department published the SAPO Bill for comments to be submitted within 30 calendar days of publication. The Authority is thus required to submit its comments by no later than 20 May 2022.</p> <p>18.3. The Bill seeks to:</p>	CEO/ Exec: LRCCC



No.	Action Item	Person Responsible
	<p>18.3.1 Revise the duties and expand on the mandate of the South African Post Office (“SAPO”);</p> <p>18.3.2 Repurpose SAPO infrastructure to provide for inter alia diversified and expanded service; and</p> <p>18.3.3 Provide for a revised governance structure for SAPO.</p> <p>18.4. Pursuant to the publication of the SAPO Bill, a task team was formed and consisted of staff members from the following Divisions:</p> <p>18.4.1 Legal, Risk and CCC;</p> <p>18.4.2 Policy, Research and Analysis; and</p> <p>18.4.3 Compliance and Consumer Affairs.</p> <p>18.5. The task team noted the amendments relating the revised governance structures but has limited its comments the amendments relating to the revised duties and expanded mandate as these relate to regulated postal services.</p> <p>18.6. The task team analysed the Bill and is of the view that:</p> <p>18.6.1 The provisions relating to the revised governance structures and the establishment of the Stamp Advisory Committee do not have a bearing on the Authority’s mandate. No comments have been made in this regard.</p> <p>18.6.2 Amendments made in relation to the expansion of the of SAPO’s mandate need to be aligned to Postal Services Act to avoid interpretation and regulatory oversight issues.</p> <p>18.7. It was recommended that Council:</p> <p>18.7.1 Take note of the Authority’s written submission;</p> <p>18.7.2 Consider and approve the enclosed comments in relation to the SAPO Bill; and</p> <p>18.7.3 Resolve on whether the approved comments can be submitted to the Department.</p>	



No.	Action Item	Person Responsible
	The submission was approved.	
19.	General	Council
20.	Date of next meeting: TBA	Secretariat
21.	Closure The Chairperson thanked all who were present at the meeting and closed it at 10:45 am.	Chairperson

Signed: 

Date: 2023-03-16

Dr Charles Lewis
(Acting Chairperson)