



Independent Communications Authority of South Africa

MINUTES OF A SPECIAL MEETING OF COUNCIL		
Date	18 May 2023	
Time:	09:00	
Venue:	Virtual- Microsoft Teams	
Present	██████████	Acting Chairperson
	██████████	Councillor
	██████████	Councillor
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	██████████	Councillor
	██████████	Councillor
By Invitation	██████████	CEO
	██████████	Acting CFO
	██████████	Executive: LRCCC
	██████████	Corporate Secretary
	██████████	Secretariat Officer
	██████████	Secretariat Officer
Partial Attendees	██████████	Executive: Licensing and Compliance
	██████████	Executive: Corporate Services
	██████████	Executive: PRA
	██████████	RF Specialist: Licensing
	██████████	Manager: Content Services
	██████████	Radio Frequency Specialist: Radio Communications
	██████████	Radio Frequency Specialist
	██████████	Snr Manager: Com&IR
	██████████	

No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>1.1. The Chairperson declared the meeting open at 09:00 and welcomed all present.</p> <p>The opening was noted.</p>	Chairperson
2.	<p>Ratification of the Agenda</p> <p>2.1. Item 13 to be combined with item 8.</p> <p>2.2. Item 19 to be discussed in a closed Council session.</p> <p>2.3. Item 16 - Discussion Document on Dynamic Spectrum Access - was added to the agenda.</p> <p>2.4. Item 21.3. Vodacom's letter to ICASA was added to the agenda.</p>	Council
3.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
4.	Adoption of Minutes of Council	Council
4.1.	<p>Minutes of Council: 31 March 2023</p> <p>The minutes were approved without amendments.</p>	Council
4.2.	<p>Minutes of Council: 24 April 2023</p> <p>The minutes were approved without amendments.</p>	Council
5.	<p>Matters Arising</p> <p>5.1. Item 1 (Inquiry into subscription TV) - Council raised concerns with regard to procurement delays. Council was informed that the deviation report being compiled by SCM will outline options in order to deal with the procurement challenges experienced.</p>	CEO

No.	Action Item	Person Responsible
	<p>5.2. Item 3 (SANDF outstanding fees) – Council sought clarity on whether the relevant Minister will still be engaged on the matter. Council was informed that Management still plans on engaging the Minister on the matter of the outstanding fees.</p> <p>5.3. Item 4 (Amendment of Annexure B of the Radio Frequency Spectrum Regulations 2015) – Council was informed that the amendment of Annexure B has been finalised, a media release is being prepared, and the final document has been sent to the Acting Chairperson for signature.</p> <p>5.4. Item 12 (ICASA’s funding model) – Council was informed that an update on the project with the Commonwealth Office and the ITU needs to be included in the Matters Arising.</p> <p>5.5. Item 13 (EXCO Vacancies) – Council indicated that it had previously requested a list of critical positions to be tabled. Council noted that the ICASA organisational structure has not been updated. Council sought clarity on whether the moratorium is self-imposed, or whether it was imposed by the Minister. Council was informed that the moratorium was implemented by the Authority, due to the Authority’s lack of funds to fill posts.</p> <p>5.6. Item 18 (Hybrid Working Model) – [REDACTED] [REDACTED] [REDACTED]</p> <p>5.7. Item 23 (Update on the PMS Assessments) – Council noted with concern that it is already Q2 and yet performance contracts with respect to the 2023/24FY are still not in place. Council reiterated that contracts must be signed urgently, and urged management to ensure that contracts are realistic – stating, as an example, that there are Council PAs with KPAs for printing of documents.</p>	

No.	Action Item	Person Responsible
	<p>5.1. Item 30 – Cell C – Council was advised that the Payment plan (for which CEO gave a Matters Arising update), is in relation to annual licence fees – Cell C has diligently been paying. However, the letter referred to in the Matters Arising, which CEO was referring to, Cell C will retract it cause they should have therein dealt with outstanding fees for the spectrum auction and not the annual fees. Council iterated that the Authority must cautiously deal with this matter given this is about the forfeited amounts / forfeited auction fees and the penalty for Cell C’s failure to pay the money in relation to the spectrum acquired at the auction.</p> <p>5.2. Council directed that the Matters Arising should be updated to reflect recent training decisions. For instance, GSMA training for Council – is it virtual or physical? OfCom secondment of staff. Regulatory Forum. It is not an exhausted list.</p> <p>5.3.</p>	
6.	<p>International Engagements (“Standing Item”)</p> <p>The Executive: Corporate Services presented the submission:</p> <p>6.1. The purpose of the submission dated 11 May 2023 was for Council to note the updated list of meetings for the 1st quarter of the 2023/24 Financial Year and nominate Councillors to attend the meetings.</p> <p><u>Recommendation to Council:</u></p> <p>6.2. It was recommended that Council should:</p> <p>6.2.1. Note the updated meetings for the first quarter of 2023/24 and the recommendations under the IR recommendation tab; and</p>	<p>CEO / Executive: Corporate Services</p>

No.	Action Item	Person Responsible
	<p>6.2.2. Nominate Council representatives for the identified meetings, considering budgetary constraints.</p> <p><u>Comments made:</u></p> <p>6.3. Council sought clarity on the consideration made by Corporate Services pursuant to its determination and recommendations regarding who should attend the respective international engagements. Council was informed that various factors are considered, amongst others, being exposure for new Councillors. Council queried what “exposure” means in this regard, and what it suggests. Management advised that this means that consideration should be the projects in which Councillors are involved – taking into account continuity. Management further indicated that, previously, submission was brought to Council without names, and this would take a long time to approve, and that, as a result, Council subsequently requested that the submission should come with proposed names for Council’s consideration.</p> <p><u>Resolutions by Council:</u></p> <p>The submission has been circulated via RRR for Council approval.</p>	
7.	<p>Litigation Update (“Standing Item”)</p> <p>Presented by the Executive: LCCC as per the powerpoint presentation circulated to Council with the meeting pack.</p> <p>Council noted the update.</p>	<p>CEO Executive: LRCCC /</p>
8.	<p>Work Progress Update in relation to Disaster Management Task Team (“Standing Item”)</p> <p>Council resolved to remove this item from the agenda.</p>	<p>Cllr [REDACTED]</p>

No.	Action Item	Person Responsible
9.	<p>The Application for extension of Digital Audio Broadcasting Plus (“DAB+”) Trial Radio Frequency Spectrum Licence for a period of six (6) months</p> <p>The Executive: Licensing and Compliance presented the submission:</p> <p>9.1. The purpose of the submission dated 05 May 2023 was for Council to approve the application by the South African Broadcasting Corporation (“the Applicant”) for the extension of Digital Audio Broadcasting Plus (“DAB+”) Trial Radio Frequency Spectrum Licence for a further period of six (6) months.</p> <p><u>Recommendation to Council:</u></p> <p>9.2. It was recommended that Council should approve the application for extension of DAB+ Trial Radio Frequency Spectrum Licence for a period of six (6) months with the same terms and conditions, as the application is in line with regulation 40 of the Radio Frequency Spectrum Regulations, 2015.</p> <p><u>Comments made:</u></p> <p>9.3. Council expressed that there is a need for alignment / confirmation of dates, as the submission has old dates and there has been a time lapse since the request was received from the SABC.</p> <p>9.4. Council expressed that the extensions cannot continue indefinitely, and that a decision needs to be made on the final cut-off date for such an extension, as this poses a risk of having to amend the regulations. Council was informed that according to the regulations, after this six (6) months’ period the Authority will not be granting any further extension.</p> <p><u>Resolutions by Council:</u></p> <p>9.5. Council resolved to approve the submission.</p>	Executive: Licensing and Compliance

No.	Action Item	Person Responsible
	<p>The submission was approved, subject to the implementation of the above-mentioned inputs.</p>	
<p>10.</p>	<p>Establishment of the Digital Migration Regulations Review Committee</p> <p>Cllr Sithole and the Executive: PRA made the presentation.</p> <p><u>Resolution by Council:</u></p> <p>10.1. Council resolved to approve the submission in-principle, pending confirmation / re-shuffling of Council Committees following the end of the 2022/23FY.</p> <p>10.2. Council confirmed that the Committee may proceed based on this approval, without having to wait for the finalisation of the re-allocations and signing of the resolutions.</p> <p>The submission was approved in-principle, pending the tabling for confirmation, of Council Committee allocations.</p>	<p>Cllr [REDACTED] / Executive: PRA</p>
<p>11.</p>	<p>Broadcasting Workshop Plan</p> <p>The Executive: PRA presented the submission:</p> <p>11.1. The purpose of the submission dated 04 May 2023 was to provide the Council with the details of a broadcasting workshop and recommend that Council should approve the submission.</p> <p><u>Recommendation to Council:</u></p> <p>11.2. It was recommended that Council approves the submission on the details of the broadcasting workshop.</p> <p><u>Comments made:</u></p> <p>11.3. Council sought clarity on whether the major broadcasting companies will be invited to the workshop (in-person) on</p>	<p>Executive: PRA</p>

No.	Action Item	Person Responsible
	<p>separate dates. Council was informed that only the representatives of commercial and community broadcasters will be invited to attend in-person, whereas others will be accommodated on the virtual platform.</p> <p><u>Resolutions by Council:</u></p> <p>11.4. Council approved the submission, but resolved that, once logistics have been finalised closer to the time of the workshop, a follow-up submission be brought to Council.</p> <p>The submission was approved.</p>	
12.	<p>Eastern Cape Regional Office (“Complainant”) and Oasis Radio (“Licensee”)</p> <p>Cllr [REDACTED] chaired the meeting for this item.</p> <p>Cllr [REDACTED] presented the submission:</p> <p>12.1. The purpose of the submission date 05 May 2023 was to table the recommendation of the Complaints and Compliance Committee (“CCC”) in the matter between Eastern Cape Regional Office (“the Complainant”) and Oasis Radio (“the Licensee”).</p> <p><u>Recommendation to Council:</u></p> <p>12.2. The CCC recommends that an order be issued by the Authority, namely to:</p> <p>12.2.1. Direct the Licensee to desist from further contravention;</p> <p>12.2.2. Direct the Licensee to pay a fine in the amount of R250 000, in respect of the non-compliance above;</p> <p>12.2.2.1. Half of the amount above is to be suspended for three (3) years on condition that the Licensee does not violate any regulations or sections</p>	Cllr [REDACTED]

No.	Action Item	Person Responsible
	<p>referred to in the charge sheet, during the period of suspension.</p> <p>12.2.2.2. The remaining R125 000 shall be payable over a period of twelve (12) months.</p> <p>12.2.3. Direct the Licensee to take steps to move its transmitter to the licensed site within 30 days from the issue of this order or to apply for its current address as the transmitter installation address within 14 days of the issuance of this order.</p> <p><u>Comments made:</u></p> <p>12.3. Council noted with concern the timelines – seven (7) months between the hearing and the date the judgement was made, and one (1) month between the judgement and the submission being brought to Council. Council was informed that the CCC Chairperson had been on sick leave for a while which contributed to the delays.</p> <p>12.4. Council sought clarity on whether the fine of R250 000 is a regulated amount, or it came as a recommendation from the CCC. Cllr Kedama informed Council that this needs to be confirmed, but the regulations give guidance on how to quantify the fines based on the non-compliance.</p> <p>12.5. Council expressed that this submission has highlighted that the ICASA Act needs to be amended, so to provide for a Deputy Chairperson of the CCC.</p> <p><u>Resolutions by Council:</u></p> <p>12.6. Council resolved to approve the submission.</p> <p>The submission was approved.</p>	
13.	Legal Opinion on the Way Forward: The Termination of the National State of Disaster on Electricity	Cllr ██████████

No.	Action Item	Person Responsible
	<p>Cllr ██████ chaired the meeting for this session, given that Cllr ██████ chairs the Disaster Management Task Team, which brought this submission to council.</p> <p>The Executive: PRA and Executive: LCCC presented the submission:</p> <p>13.1. The purpose of the submission dated 12 May 2023 was to request Council to:</p> <p>13.1.1. Note the findings and recommendation contained in the legal opinion from the Legal, Risk and CCC Division (“LRCCC”) on the way forward following the termination of the National State of Disaster on Electricity;</p> <p>13.1.2. Approve the Disaster Management Task Team’s (“DMTT”) recommendation for the constitution of a Council Committee on the ICT Electricity Crisis to ascertain the impact of load-shedding on the electronic communications, broadcasting, and postal services sectors, and to identify potential regulatory measures that lie within the scope of the Authority;</p> <p>13.1.3. Nominate the Councillors who will form part of the ICT Electricity Crisis Council Committee; and</p> <p>13.1.4. Approve the response to Vodacom’s letter dated 26 April 2023.</p> <p><u>Recommendation to Council:</u></p> <p>13.2. It is recommended that Council:</p> <p>13.2.1. Note the findings and recommendation contained in the legal opinion from the LRCCC on the way forward following the termination of the Sate of Disaster on electricity;</p>	

No.	Action Item	Person Responsible
	<p>13.2.2. Approve the Disaster Management Task Team’s (“DMTT”) recommendation for the constitution of a Council Committee on the ICT Electricity Crisis that will ascertain the impact of load-shedding on the electronic communications, broadcasting, and postal services sectors, and to identify potential regulatory measures that lie within the scope of the Authority;</p> <p>13.2.3. Nominate the Councillors who will form part of the Electricity Crisis Council Committee; and</p> <p>13.2.4. Approve the response to Vodacom’s letter dated 26 April 2023.</p> <p><u>Comments made:</u></p> <p>13.3. Council suggested that the Authority communicate with stakeholders, so as to highlight the fact that the Authority is doing some work around the issue of the termination of the National State of Disaster. Council was informed that the suggestion will be looked at, and a press statement will be drafted.</p> <p><u>Resolutions by Council:</u></p> <p>13.4. Council resolved that the nominations of Councillors who will sit in the Council Committee on ICT Electricity Crisis will be done once the final numbers of Council Committees for each Councillor have been finalised. This will ensure that the allocations are balanced / equal in terms of numbers.</p> <p>13.5. Council resolved to approve the submission.</p> <p>The submission was approved.</p>	
14.	Report on the Second Session of the Conference Preparatory Meeting (CPM23-2) for WRC-23	Cllr [REDACTED]

No.	Action Item	Person Responsible
	<p>Councillor [REDACTED] and the Radio Frequency Specialist presented the submission dated 11 May 2023, the purpose of which was to:</p> <p>14.1 Apprise Council of the CPM 23-2 conference attended by the Authority’s delegation from 26 March - 7 April 2023, and</p> <p>14.2 Recommend that Council approves the Report and notes the recommendations contained in the CPM 23-2 report.</p> <p><u>Recommendation to Council:</u></p> <p>14.3 It was recommended that Council should note the contents and recommendations contained in the CPM 23-2 report from ICASA delegation.</p> <p><u>Comments made:</u></p> <p>14.4 Council expressed its support for the recommendation for the Authority to organise a workshop on WRC23. Further Council highlighted that it would have preferred for the workshop to have taken place before today’s Council meeting. This would have assisted Councillors to be able to follow discussions.</p> <p>14.5 Council expressed that, as the representative of the country at the ITU, DCDT needs to be provided with support by the Authority. The Authority, as the independent regulator, needs to seek to influence the decisions taken by DCDT in regard to the different bands. Council was informed that the reason ICASA’s officials are attending such conferences, was to ensure that they are able to influence the decision-making process. Council requested that the presentation made to Council on the CPM 23-2 conference report be shared with Councillors.</p> <p>14.6 Council noted several misstatements on the slide six (6) on the presentation. It is stated in the presentation that lower 6 GHz and the upper 6 GHz both been made available for IMT. Currently only the lower 6 GHz has been opened for W-Fi, and it will take a while before the</p>	

No.	Action Item	Person Responsible
	<p>upper 6 GHz may be made available for IMT (there is no change in position in this band). Council was informed that the lower 6 GHz has already been released for W-Fi, and that the issue of the upper 6 GHz is still under discussion, and yet to be finalised.</p> <p>14.7 Council sought clarity on the position taken by the Authority in regard to the 10.5 GHz band, whether this band will be made available for IMT. Council was informed that the matter on whether the 10.5 GHz band will be allocated to IMT or not is still under discussion.</p> <p>14.8 Council sought clarity on whether it was permissible for Councillors to pay from their individual budgets to attend the conference, which is relevant to their respective projects, even though they have not been nominated to attend. Council was informed that Councillors who are currently participating in relevant work, may attend the conference as there is a need for continuity.</p> <p>14.9 Council highlighted that, given that the national preparatory meetings are being held on 18 and 19 May 2023, it would have been prudent for Council to have received the invitations much earlier, as this would have provided Councillors with a chance to listen to the deliberations</p> <p><u>Resolutions by Council:</u></p> <p>Council resolved to note the submission.</p> <p>The submission was noted.</p>	
15.	<p>Discussion Document on Dynamic Spectrum Access</p> <p>Councillor █████ presented the submission.</p> <p>15.1 The purpose of the submission dated 16 May 2023 was to request Council to:</p> <p>15.1.1 Approve the erratum to Government Gazette No 48352 (Notice No 3242) of 31 March 2023 regarding the Discussion Document on Dynamic</p>	Cllr █████

No.	Action Item	Person Responsible
	<p style="text-align: center;">Spectrum Access and Opportunistic Spectrum Management, extending the deadline for submissions to 23 June 2023, at 16h00.</p> <p><u>Recommendation to Council:</u></p> <p>15.2 It was recommended that Council should approve the erratum to Government Gazette No 48352 (Notice No 3242) of 31 March 2023 regarding the Discussion Document on Dynamic Spectrum Access and Opportunistic Spectrum Management extending the deadline for submissions to 23 June 2023, at 16h00.</p> <p><u>Comments made:</u></p> <p>15.3 Council sought clarity on whether the submission sought an extension, or it sought to correct an error. If it was to correct an error, how did the error occur. Council was informed that error was made by the Committee when they were calculating the number of days.</p> <p>15.4 Council sought comfort that the five (5) days period of extension proposed was sufficient. Council was informed that the proposed extension provides enough time for those who did not manage to submit initially, and that any who have already submitted but wish to amend their submissions will be offered an opportunity to do so.</p> <p>15.5 Council highlighted that this error tarnished the reputation of the Authority, and thus that consequence management needs to be implemented.</p> <p><u>Resolutions by Council:</u></p> <p>15.6 Council highlighted that the proposed date of the 23 June 2023 is on a Friday and resolved that this date should be amended to 26 June 2023.</p> <p>15.7 Council resolved to approve the submission.</p> <p>The submission was approved, subject to the above-mentioned input.</p>	

No.	Action Item	Person Responsible
	<p>[REDACTED]</p> <p>18.5. Council sought clarity [REDACTED]</p> <p>[REDACTED]</p> <p>18.6. Council expressed [REDACTED]</p> <p>[REDACTED]</p> <p>18.7. Council requested it be kept updated on the progress of this case.</p> <p><u>Resolutions by Council:</u></p> <p>18.8. Council resolved that a legal opinion must be sought, so as to provide guidance on the avenues the Authority can use to resolve this issue without going to the Labour Court.</p> <p>18.9. Council resolved that, when the review of the EE plan is done, it should take into consideration what is realistic in terms of the targets set.</p> <p>Council resolved to approve the submission, subject to the implementation of the abovementioned inputs.</p>	
18.	<p>Appointment of the Executive: Human Resources</p> <p>This matter was discussed in a closed session of Council.</p> <p>(A separate link was created for this session)</p>	<p>CEO / Executive: LRCCC</p>

No.	Action Item	Person Responsible
	<p>18.1 The CEO and the Executive: LRCCC presented the Senior Counsel’s legal opinion, which had been requested by Council to enable it to make a decision.</p> <p><u>Resolution of Council:</u></p> <p>18.2 Council resolved to uphold the legal opinion as presented.</p> <p>18.3 [REDACTED]</p> <p>1. [REDACTED]</p> <p>2. [REDACTED]</p> <p>18.4 Council resolved to approve the recommendation as outlined above.</p>	
19.	<p>Review Application by Octotel</p> <p>The Executive: LRCCC presented the submission:</p> <p>19.1 The purpose of the submission dated 15 May 2023 was for Council to note the review application launched by Octotel, and approve that the LRCCC Division instructs external attorneys to oppose the review application.</p> <p><u>Recommendation to Council:</u></p> <p>19.2 It was recommended that Council should:</p> <p>19.2.1 Note the review application instituted by Octotel; and</p>	<p>CEO / Executive: LRCCC</p>

No.	Action Item	Person Responsible
	<p>19.2.2 Resolve that the LRCCC Division instructs external attorneys to oppose the review application.</p> <p><u>Comments made:</u></p> <p>19.3 Council sought clarity on whether Management is requesting Council to give a mandate to oppose. Council was informed that Management is indeed requesting Council to give a mandate to oppose the application.</p> <p><u>Resolutions by Council:</u></p> <p>19.4 Council resolved to approve the submission.</p> <p>The submission was approved.</p>	
20.	<p>General</p> <p><u>Meta's request to meet with Council</u></p> <p>20.1 Council resolved to accede to the request for a meet and greet – which will be arranged to be for 30 mins prior the start of the next Council meeting.</p> <p><u>Invitation to attend African Bar Association</u></p> <p>(Cllr Mushi chaired this agenda item)</p> <p>20.2 Council noted that a slot has been given, and therefore that a paper to talk on must be identified. Council resolved to channel this to the PRA to work on. Council to attend with the support of the PRA.</p> <p><u>Vodacom request to have a meeting with Council</u></p> <p>20.3 Council resolved to accede to the request. Agenda to be clear that current regulatory processes are not to be discussed. The office of the Chairperson will co-ordinate.</p>	Council
21.	Closure	Council

No.	Action Item	Person Responsible
	The Chairperson thanked all who were present at the meeting and declared the meeting adjourned.	

Signed:  _____

Yolisa Kedama

(Acting Chairperson)

Date: 18-07-2023 _____