



**Independent Communications Authority of South Africa**

**MINUTES OF AN ORDINARY MEETING OF COUNCIL**

<b>Date</b>	<b>18 October 2022</b>	
<b>Time:</b>	<b>09:00</b>	
<b>Venue:</b>	<b>Microsoft Teams</b>	
<b>Present</b>	██████████	Acting Chairperson
	██████████	Member
	██████████████████	Member
<b>By Invitation</b>	██████████	Acting CEO
	██████████████	CFO
	████████████████████	CAE
	██████████████████	Corporate Secretary
	██████████████████	Secretariat Officer
	██████████████	Secretariat Officer
<b>Partial Attendees</b>	██████████████	Executive: Licensing and Compliance
	██████████████	██
	██████████████	SM: Engineering Facilities & Research
	██████████████████	Manager Broadcasting Frequency Coordination



	██████████	SM: Market Regulation PRA
	██████████	Executive: Legal, Risk and CCC
	██████████	SM: Type approval and numbering
	██████████	Manager Service Broadcasting
	██████████	Manager Wholesale Services
Apologies	██████████	Member

No.	Action Item	Person Responsible
1.	<p><b>Opening and apologies</b></p> <p>1.1. The Chairperson opened the meeting at 08:00 and welcomed all present.</p> <p>1.2. Cllr ██████████ was on leave.</p> <p>.</p> <p><b>The opening and apologies were noted.</b></p>	<b>Chairperson</b>
2.	<p><b>Declaration of interest</b></p> <p>No conflict of interest was noted.</p>	<b>Council</b>
3.	<p><b>Ratification of the Agenda</b></p> <p>3.1. Litigation report was included as a “Standing Item”.</p> <p>3.2. Item D2 was deferred to the next meeting of Council.</p> <p>3.3. Item C3.2 was deferred to the next meeting of Council.</p> <p><b>The agenda was ratified.</b></p>	<b>All</b>



No.	Action Item	Person Responsible
4.	<p><b>Adoption of Minutes of Council</b></p> <p>Minutes of Council: 30 May 2022</p> <p>Council resolved to table the minutes, but resolved to defer the adoption.</p> <p><b>The adoption was deferred.</b></p>	<b>Council</b>
4.2	<p>Minutes of Council: 6 July 2022</p> <p>Council resolved to table the minutes but resolved to defer the adoption.</p> <p><b>The adoption was deferred.</b></p>	<b>Council</b>
4.3	<p>Minutes of Council: 14 July 2022</p> <p>Council resolved to table the minutes, but resolved to defer the adoption.</p> <p><b>The adoption was deferred.</b></p>	<b>Council</b>
5.	<p><b>Matters Arising</b></p> <p>5.1. Council resolved that the 2020/21 FY Performance Rewards Payment re-submission serve at the next meeting of Council inclusive of a legal opinion.</p> <p><b>The update on Matters Arising was noted.</b></p>	<b>Acting CEO</b>
6.	<p><b>International Engagements</b></p> <p><b>The Acting CEO presented the update.</b></p>	<b>CEO/ Exec: Corporate Services</b>



No.	Action Item	Person Responsible
	<p>6.1. 7<sup>th</sup> Sub-Sahara Spectrum Management Conference - An update report to be circulated to Cllrs before the next Council meeting.</p> <p>6.2. International engagement report is to be submitted to Council more regularly on substantive matters.</p> <p>6.3. ITU PP-22 Report to be submitted to Council.</p> <p><b>The update was noted.</b></p>	
7.	<p><b>Licensing of IMT (“Standing Item”)</b></p> <p><b>The Committee Chairperson presented the item.</b></p> <p>The purpose of the submission was to present a verbal update on the various ongoing processes related to the licensing of IMT.</p> <p><u>The following comments were made:</u></p> <p>7.1. The Committee requested that a SteerCo meeting be scheduled to review progress.</p> <p><b>The update was noted by Council.</b></p>	Cllr [REDACTED]



<p>8.</p>	<p><b>Settlement terms for the Review Application on the Amendment Application of VUMA FM’s Individual Commercial Sound Broadcasting Service Licence in the matter between VUMA FM and ICASA</b></p> <p>The Executive Legal &amp; CCC presented the item.</p> <p>8.1. The purpose of the submission was to apprise Council in the matter between Vuma FM and ICASA (Case No. 61869/21) regarding the draft settlement terms for the Review Application of Vuma FM to amend their individual commercial sound broadcasting (“I-CSBS”) licence dated 27 July 2020, ;and recommend that Council approves that the Authority should accept the terms and that the LRCCC Division should proceed and instruct the Attorneys of Record to attend to the conclusion of the settlement agreement.</p> <p>8.2. Vuma FM has proposed that each party pay its own costs. However, it is normal practice that, when an applicant withdraws its application, the applicant should tender the wasted costs of the respondents.</p> <p>8.3. In exercising discretion on payment of legal costs, it must be noted that the Authority has incurred legal fees totalling R775,941.37 in defending the matter. An amount of R533 070.38 was paid to the Attorneys and R242 870.99 to the Senior Counsel. The total legal fees cost will have to be taxed and Counsel’s fees are often heavily taxed by the Tax Master.</p> <p><u>Recommendation to Council:</u></p>	<p><b>CEO/ Exec: Legal &amp; CCC</b></p>
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	<p>8.4. It was recommended that Council approve that a settlement agreement be entered into, and that the LRCCC Division should proceed to instruct the Attorneys of Record to conclude a settlement agreement on the proposed terms.</p> <p><u>Comments and Resolution</u></p> <p>8.5. Council resolved not to approve the submission, and requested that the submission be re-tabled, clarifying the impact of paragraph 5.1.1 and 5.1.2 of the submission.</p> <p>8.6. Council resolved that the implications of Vuma FM resubmitting an amendment application as proposed in the settlement agreement be thoroughly considered and explained.</p> <p>8.7. Council further resolved that the error on the part of the Authority that led to this matter, be investigated.</p> <p><b>The decision on the submission was deferred pending the additional submission to Council.</b></p>	
<p>9.</p>	<p><b>Review Application by MTN in relation to the Mobile Broadband Service Regulations.</b></p> <p>The Executive Legal &amp; CCC presented the submission.</p> <p>9.1 The purpose of this Council Submission was to apprise Council of the review application by MTN; and to recommend that Council resolves that the Authority should oppose the application and that the LRCCC Division should proceed and instruct the attorneys on its panel to attend to all court processes linked to or incidental to the opposition of the application.</p> <p>9.2 MTN has approached the Court for the following relief:</p>	<p><b>CEO / Exec: Legal &amp; CCC</b></p>



9.2.1 “Reviewing and setting aside, and declaring invalid the following provisions of the Mobile Broadband Services Regulations, 2021 published under Notice 1960 in the Government Gazette of 31 March 2022 (“the Regulations”);

9.2.1.1 Regulations 3(a), 3(b) and 3(c);

9.2.1.2 Regulation 5 to the extent that it refers to “the Retail market”; “Upstream market 1” and “Upstream market 2”;

9.2.1.3 Regulation 6 to the extent that it relates to the Applicant; and Submission on review application on Mobile Broadband Services Regulations – September 2022 Regulation 7 to the extent that it relates to the Applicant (collectively, “the impugned regulations”);

9.3 In terms of the PAJA Act No 3 of 2000, consultations with the affected parties were held during the process, and they were given a chance to comment.

9.5 The issue of confidentiality in respect of sensitive information was raised. MTN can request confidentiality on those parts of the information to be submitted in terms of the regulations which they deem commercially sensitive, which request will be dealt with in terms of the Authority’s Confidentiality Guidelines.

It was recommended that Council:

9.6 notes the review application.

9.7 approve that the application be opposed and that the LRCCC Division should proceed to brief the attorneys on its panel to attend



	<p>to all court processes linked to or incidental to the opposition of the application. The said notice to oppose has been filed.</p> <p><u>Comments and Resolutions</u></p> <p>9.8 Council requested further clarity regarding the timelines in the matter.</p> <p>9.9 Council raised that Council Committees should ensure proper records of the proceedings, deliberations and documentation of all Council Committees be kept.</p> <p>9.10 Management informed Council that the Authority will be requesting an extension to file the Rule 33, as the information being requested does not only apply to the Authority's information, but letters from other Mobile Network Operators.</p> <p>9.11 Council resolved that the matter be included in the Litigation Report.</p> <p><b>The submission was approved.</b></p>	
<p><b>8.</b></p>	<p><b>Telkom Review Application – Findings on the 2014 Pro-Competitive Remedies Imposed</b></p> <p>The Executive Legal &amp; CCC presented the submission.</p> <p>10.1. The purpose of this Council Submission was to apprise Council of the review application by Telkom, and to recommend that Council resolves that the Authority should oppose the application, and that the LRCCC Division should proceed and instruct the attorneys on its panel to attend to all court processes linked to or incidental to the opposition of the application.</p> <p>10.2. LRCCC Division received a review application by Telkom SOC Ltd to review and set aside certain determinations made</p>	<p><b>CEO/ Exec: Legal &amp; CCC</b></p>





in the Findings Document on the Review of the 2014 Pro-competitive Remedies imposed on Licensees in terms of the Call Termination Regulations, 2014, published in Government Gazette No 46107 of 28 March 2022 (“the Findings Document”).

10.3. Telkom has approached the Court to review and set aside the determinations made in paragraphs 5.1.5.1, 5.1.5.2 and 5.1.5.3 in the Findings document.

10.4. In terms of the PAJA Act No 3 of 2000, consultations with the affected parties were held during the process, and they were given a chance to comment.

10.5. Telkom maintains that, aside from relying on the European Commission’s recommendations, the Authority did not conduct an independent assessment of the prevailing market conditions, nor did it provide a reason why it considered the three or four-year period recommended by the EU Commission to be appropriate in the South African context.

Recommendation:

10.6. It was recommended that Council:

10.6.1 notes the review application;

10.6.2 approve the recommendation that the application be opposed and that the LRCCC Division should proceed to brief the attorneys on its review panel on the review application Telkom v ICASA to attend to all court



	<p>processes linked to or incidental to the opposition of the application.</p> <p><b>The submission was approved.</b></p>	
<p><b>9.</b></p>	<p><b>New Generation Draft Spectrum Policy</b></p> <p>The Executive Legal Risk and CCC presented the item.</p> <p>12.1. The purpose of this submission was for Council to approve the Authority’s submission to the Department of Communications and Digital Technologies (“DCDT”) on the Draft Next Generation Spectrum Policy published in the Government Gazette on 8 September 2022 (“the Draft Spectrum Policy”).</p> <p>12.2. The Draft Spectrum Policy seeks to:</p> <p>12.2.1 Address the policy gaps and limitations identified in the 2016 ICT White Paper; and</p> <p>12.2.2 Establish a mechanism for creating a stable and predictable regulatory environment.</p> <p>12.3. The submission to the Draft Spectrum Policy has been prepared by a Task Team consisting of members from the Legal Risk &amp; CCC, Licensing, Engineering, Consumer Affairs and Policy Research &amp; Analysis divisions.</p> <p><u>Recommendation to Council:</u></p> <p>12.4. It was recommended that Council consider and approve the attached submission on the Draft Spectrum Policy to the DCDT.</p> <p><u>Comments and Resolutions</u></p>	<p><b>CEO/ Exec:</b></p> <p><b>Licensing and Compliance</b></p>



	<p>12.5. Council expressed that reference to the spectrum fees owed by SANDF should be removed, as the comments made by the Authority will be made public.</p> <p>12.6. Council inquired if the Policy would impact the ECA and the functions of the Authority and the Independence of the Authority.</p> <p>12.7. Management informed Council that, should the Policy proceed, it would lead to the eventual amendment of the ECA.</p> <p>12.8. Council resolved that the updated submission be shared with Council, and further that Councillors be given a chance to make final comments by 19 October 2022.</p> <p><b>The submission was provisionally approved, subject to the final comments by Council.</b></p>	
<p><b>12</b></p>	<p><b>Internal Audit Submission – Quarter 1 Progress Report</b></p> <p><b>The Chief Audit Executive presented the item.</b></p> <p>13.1. The purpose of this submission was to apprise Council of Internal Audit’s activities during Quarter 1 of the 2022/2023 Financial Year, and of performance against the approved Audit Plan.</p> <p>13.2. Internal Audit has been able to achieve their target for the quarter of 20 to 30% of the approved annual audit plan.</p> <p>13.3. Treasury placed a moratorium on procurement, and the Internal Audit plan was adversely affected by the moratorium.</p>	<p><b>CAE</b></p>



	<p>13.4. Internal Audit faced capacity challenges. However, there is a recruitment process under way. AREDC gave an approval to augment the skills and capacity by getting a panel to help with that aspect.</p> <p>13.5. On the previously reported findings of Quarter One 47 findings were reported, thirty-eight (38) of which were cautionary while one (1) was a high finding. A process has been employed to continuously track the findings to ensure closure by management.</p> <p>13.6. Four (4) reactive bid assurance reviews were undertaken to identify irregular expenditure, and none was identified.</p> <p><u>Comments and Resolutions</u></p> <p>13.7. Council expressed concern regarding the ASMS and requested a presentation on the ASMS System be tabled in the next Council meeting.</p> <p>13.8. Council expressed concern regarding the IT Audit findings and inquired about the steps being taken to mitigate the adverse findings.</p> <p>13.9. Management informed Council that there is concern over the adverse findings, and there will be a report that will be submitted to ITRC and AREDC, following which the report will be shared with Council.</p> <p><b>The submission was noted.</b></p>	
13	<b>Review of Audit Risk Ethics &amp; Disclosures Committee's ToR</b>	<b>CAE</b>



	<p>The Chief Audit Executive presented the item.</p> <p>14.1. The purpose of this submission is to seek Council's approval of the reviewed Audit Risk Ethics &amp; Disclosures Committee's Terms of Reference.</p> <p>14.2. The last review took place in 2018. Internal Audit has now done a review, and proceeded to submit its recommendations to AREDC and EXCO, twice, for deliberations.</p> <p><u>Recommendations to Council:</u></p> <p>14.3. Council was requested to review the attached ToR, provide input and give its approval.</p> <p><u>Comments and Resolutions</u></p> <p>14.4. Council expressed that the requirement for the AREDC Chairperson at Parliament should be left to the discretion of Council. Council further expressed that, should the AREDC Chairperson not be able to attend, the Chairperson should recommend a member to attend on their behalf.</p> <p>14.5. Council recommended that 4.6 should be amended. Council was further of the view that 6.1.3 should be rephrased.</p> <p>14.6. Management informed Council that the suggestions will be implemented.</p> <p>14.7. Council resolved to share recommended amendments for incorporation via email.</p>	
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	<p>14.8. Council resolved that the sections dealing with the Secretariat of the Committee and remuneration be amended, and further that the submission be re-tabled once the amendments have been made.</p> <p><b>The decision was deferred pending re-submission.</b></p>	
<p><b>14</b></p>	<p><b>Application for Renewal of Individual Commercial Sound Broadcasting Service Licence and Radio Frequency Spectrum Licence by Cape Town Radio (Pty) Ltd T/A Smile 90.4 FM</b></p> <p>The Project Manager presented the submission.</p> <p>15.1. The purpose of this submission was to provide Council with an analysis of the application submitted by Cape Town Radio (Pty) Ltd t/a Smile 90.4 FM ("the Applicant") for the renewal of its Individual Commercial Sound Broadcasting Service ("I-CSBS") and Radio Frequency Spectrum ("RFS") licences, and to recommend that Council approves the Applicant's renewal application.</p> <p>15.2. The Applicant holds both I-CSBS and RFS licences to provide commercial sound broadcasting services in the City of Cape Town Metropolitan area in the Western Cape Province.</p> <p>15.3. The applicant has 75.5% HDI ownership, and is thus above the threshold. Further, they have not been found to have a CCC contravention.</p> <p><u>Recommendations to Council:</u></p> <p>15.4. It was recommended that Council approves the Applicant's application to renew its I-CSBS and RFS Licences for the following reasons:</p>	<p><b>Cllr</b></p> <p>██████████</p>



15.4.1 The Applicant's renewal application is in line with section 11 (1), (2), and (3) and 31 (1), (2), and (3) of the EC Act read with regulation 10 (1), (2), and (3) of the Regulations.

15.4.2 The Applicant's HDI equity stake meets the Authority's legislated minimum 30% HDI requirement, as stipulated in section 9 (2) (b) of the EC Act.

15.4.3 The Applicant has paid all the licence fees due and payable at the date of the application.

15.4.4 The Applicant has not been found guilty of any contravention by the CCC. Further, according to the BCCSA, the Applicant has always given effect to all rulings made against it, and has abided by the procedures applied by the BCCSA, and that no contraventions and accordingly no sanctions were imposed to the Applicant in the period under review.


15.4.5 The Applicant has complied with section 11 (7) and regulation 12 (1) of the EC Act and the Regulations, respectively.

Comments and Resolutions

15.5. Council inquired if the interference analysis completed was performed in the field or whether it was a software analysis.

15.6. Management informed Council that the analysis was completed by means of a software tool. Management further informed



	<p>Council that there was a minor interference that was identified, which, however, was not classified as a harmful interference.</p> <p><b>The submission was approved.</b></p>	
15	<p><b>Recommendation by CCC to Council in the matter between Telkom SA Soc Ltd (“Telkom”) And Metro Fibre Networx (Pty) Ltd (“MFN”)</b></p> <p><b>Deferred for the next council meeting, to be tabled with item C3.2.</b></p>	<p><b>CEO/ Exec: PRA</b></p>
16	<p><b>Request for Council to approve the Draft Consumer Advisory Panel Regulations, Explanatory Memo and Draft Letter to the Minister</b></p> <p>The Project Manager presented the item.</p> <p>17.1. The purpose of the submission was to request Council approves the draft consumer advisory panel regulations, Explanatory Memo and Draft Letter to the Minister.</p> <p>17.2. Council approved the establishment of a Council Committee to review the current consumer advisory panel regulations, which Committee has worked on the reviewed CAP regulations as mandated by council.</p> <p><u>Recommendation to Council:</u></p> <p>17.3. The recommendation of this submission was to request Council approve the draft consumer advisory panel regulations, Explanatory Memo and Draft Letter to the minister.</p> <p><b>The submission was approved.</b></p>	<p><b>Cllr</b>  </p>





<p>17</p>	<p><b>Submission of Broadcasting Annual Compliance Reports for Individual Broadcasting Services Licensees</b></p> <p>The Executive Licensing and Compliance presented the item.</p> <p>18.1. The purpose of this submission was for Council to approve the attached four annual compliance reviews (“ACR’s”) for individual sound and television broadcasting service licensees (“I-BS”) for the 2021/2022 financial year.</p> <p>18.2. For the 2021/2022 fiscal year these reports were not contained in the submission that was approved by Council in the period ending on 30 March 2022. The reason for it was that there were delays from various licensees in submitting the required information available to the Authority..</p> <p>18.3. Despite this the Division met its OPP target of 60 reports. The ones for individual licensees ought to be compiled as we compile annual compliance reports for licensees, and we ought to bring them before Council for consideration.</p> <p>18.4. The four licensees are: Vuma FM, Multichoice, On Digital Media and East Coast Radio.</p> <p>18.5. There are 313 operational licensees while the remaining (18) are non-operational.</p> <p><u>Recommendation to Council</u></p>	<p><b>Exec: Licensing and Compliance</b></p>
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	<p>18.6. It was recommended that Council approves the remaining Four (4) annual compliance reports compiled for the commercial broadcasting service licensees.</p> <p><u>Comments and Resolutions</u></p> <p>18.7. Council inquired if there was any action contemplated in relation to ODM, or whether the process would take place separate to the current requested approval.</p> <p>18.8. Management informed Council that the ODM process was currently under way, and, further, that the referral of ODM was a separate process.</p> <p><b>The submission was approved.</b></p>	
<p><b>18</b></p>	<p><b>Change and update of ICASA licensee information- K2015351513 South Africa (Pty) Ltd T/A One Telecom</b></p> <p>The Executive Licensing and Compliance presented the Item.</p> <p>.</p> <p>19.1. The purpose of the submission was to advise Council of a notice from K2015351513 South Africa t/a One Telecom (“One Telecom”), requesting the authority to effect change to its licence information i.e., the name, contact details and shareholding.</p> <p>19.2. The organisation has successfully submitted within the stipulated 7 days of occurrence.</p> <p>19.3. The Authority is satisfied with the licensee submission and that they do meet the requirement to lodge in their notification.</p> <p><u>Recommendations to Council:</u></p>	<p><b>Exec: Licensing and compliance</b></p>




	<p>19.4. It was recommended that Council approves One Telecom’s request, which was approved by OPCO / EXCO on the 7<sup>th</sup> of September 2022, and for the Chairperson to sign off the updated licences of One Telecom.</p> <p><b>The submission was approved.</b></p>	
19	<p><b>Quality of service reports for data services in two provinces for Financial Year 2021/22</b></p> <p><b>Deferred to the next meeting.</b></p>	<p><b>CEO / Executive Engineering &amp; Technology</b></p>
20	<p><b>Quality of Service Reports for voice services in six provinces for Financial Year 2021/22</b></p> <p><b>Deferred to the next meeting</b></p>	<p><b>CEO / Executive Engineering &amp; Technology</b></p>
21	<p><b>Report on the analysis of tariff notification submitted for the period 1 Jan 2022 to 30 June 2022</b></p> <p>The Executive Policy Research and Analysis presented the item.</p> <p>21.1. The purpose of the submission was to request Council to note the report on the analysis of tariff notifications submitted to ICASA for the period 01 January 2022 to 30 June 2022, which will be published on the Authority’s website.</p> <p>21.2. The report presents an analysis of the 265 tariff notifications received from individual licensees during the period under review.</p>	<p><b>Executive PRA</b></p>



	<p><u>Recommendations to Council:</u></p> <p>21.3. It was recommended that Council note the report which will be published on the Authority’s website for public consumption.</p> <p><u>Comments and Resolutions</u></p> <p>21.4. Council resolved that future reports include quantitative evidence to back up the data report.</p> <p>21.5. Council resolved that the full report link be made available on the summary report, prior to publishing on the Authority’s website.</p> <p><b>The submission was noted.</b></p>	
<p><b>22</b></p>	<p><b>General</b></p> <p>Panellist Invitation Letter to ██████████</p> <p><b>Council approved the invitation.</b></p>	<p><b>Chairperson</b></p>
<p><b>23</b></p>	<p><b>Invitation to Wapoloza</b></p> <p>Council resolved that either Councillor ██████████ or Councillor ██████████ attend the event, supported by Policy Research and Analysis and the Executive Engineering and Technology.</p> <p><b>The invitation was approved.</b></p>	
<p><b>24</b></p>	<p><b>Ilitha Telecoms</b></p> <p>Council resolved that Councillor Kedama attend the event.</p> <p><b>The invitation was approved.</b></p>	



25	<b>Dark Fibre Licence Amendment Application</b>  Council resolved that a special Council meeting be scheduled – 21 October 2022.	
26	<b>Date of next meeting: TBA</b>	<b>Secretariat</b>
27	<b>Closure</b>  The Chairperson thanked all who were present at the meeting and closed at 15:06 pm.	<b>Council</b>

**Signed:**  \_\_\_\_\_

**Date:** 2023-03-16 \_\_\_\_\_

**Dr Charley Lewis**  
**(Acting Chairperson)**