



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY COUNCIL MEETING		
<b>Date</b>	02 October 2018	
<b>Time:</b>	10h30	
<b>Venue:</b>	Block C, Building 14 ,11 Byls Bridge Boulevard, Centurion	
<b>Present</b>		
	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
<b>By Invitation</b>		
	[REDACTED]	CEO
	[REDACTED]	CAE
	[REDACTED]	CFO
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
<b>Partial Attendees</b>		
	[REDACTED]	Specialist: Litigation and General Legal Support
	[REDACTED]	Specialist: Legislation and Regulatory Drafting
	[REDACTED]	SM: Consumer Affairs
	[REDACTED]	Member of CAP
	[REDACTED]	Member of CAP
	[REDACTED]	Chairperson of CAP
	[REDACTED]	Manager: Wholesale Services
	[REDACTED]	GM: PRA
	[REDACTED]	Specialist: Monitoring Evaluation
<b>Apologies</b>		
	[REDACTED]	Member



	<b>Action Item</b>	<b>Person Responsible</b>
1.	<p><b>Opening and apologies</b></p> <p>The Chairperson opened the meeting at 11h20 and welcomed all present.</p> <p><b>The following apologies were noted:</b></p> <ul style="list-style-type: none"> <li>1.1 Cllr [REDACTED] was attending the ICT symposium in Kampala, Uganda.</li> <li>1.2 Cllr [REDACTED] requested to leave at 13:30</li> <li>1.3 Cllr [REDACTED] requested to leave early at 14h00.</li> </ul>	<b>Chairperson</b>
2.	<p><b>Ratification of agenda</b></p> <p>It was resolved that all items that required noting by Council be deferred to the next meeting:</p> <p>The following <b>“Standing Items”</b> were deferred to the next meeting:</p> <ul style="list-style-type: none"> <li>2.1 International Engagements.</li> <li>2.2 CRASA/SADC.</li> <li>2.3 ITU.</li> </ul> <p><b>The following items were also deferred to the next meeting:</b></p> <ul style="list-style-type: none"> <li>2.4 MOU with the Competition Commission.</li> <li>2.5 Proposed responses on questions of clarity on the implementation of the End-User and Subscriber Service Charter Amendment Regulations.</li> <li>2.6 Application for the amendment and renewal of the Individual Commercial Sound Broadcasting Service Licence by RISE FM Broadcast (Pty) Ltd.</li> <li>2.7 Digital Migration Policy.</li> </ul>	<b>Council</b>

	<b>Action Item</b>	<b>Person Responsible</b>
	<p>2.8 Case Analysis: Cell C (Pty) Limited v The Chairperson of ICASA and Others.</p> <p>2.9 Report on Postal Committee Meeting held in Lilongwe, Malawi from 16-18 July 2018.</p> <p>2.10 International Relations Strategy.</p> <p>2.11 Auditor General of South Africa (AGSA) Final Management Report 31 March (2017/18).</p>	
3.	<p><b>Declaration of interest</b></p> <p>No conflict of interest was noted at the meeting.</p>	All
4.	<p><b>Adoption of previous minutes</b></p>	Council
4.1	<p><b>Minutes of a special meeting held on the 17 September 2018</b></p> <p>The following amendments were noted:</p> <p>Page 1-Clirs [redacted] and [redacted] were not present at the meeting, they were attending a Cyber Security meeting in Mauritius.</p> <p>4.1.1 Page 7-15.4-The acronym "IIPBS should have one "I".</p> <p>4.1.2 On 15.7.3, second sentence should be applicants.</p> <p>4.1.3 On 15.7.4 "Hearings were not necessary.</p> <p>4.1.4 The word <b>WOWTV</b> should have a hyphen <b>WOW-TV</b>.</p> <p>4.1.5 Item 28: The word "cess' is an incomplete word for "Access".</p> <p>4.1.6 The minutes should also indicate that the Chairperson joined the meeting at 12:00 pm.</p> <p><b>It was resolved that the minutes be approved with changes.</b></p>	Council
4.2	<p><b>Minutes of a meeting held on the 25 September 2018</b></p> <p>The following corrections were made:</p>	Council

	Action Item	Person Responsible
	<p>4.2.1 On Page 3- 8.2.3 “online directory” not online directly.</p> <p>4.2.2 On Item 10, pg. 3- The resolution was incorrect- It should state that “Council will go on a walk-about at the new premises and hold a meeting at the prospective landlord 's premises.</p> <p>4.2.3 On Item 12, pg. 4 insert the word “of” after gazette.</p> <p>4.2.4 On 12.3-Outline which additional documents were requested by Council prior to making the decision (letters and legal opinion).</p> <p>4.2.5 On pg. 5-Item 15 –Cllr [REDACTED] made additional inputs-The Committee should share updated revised dates with Councillors so that they could diarise and act accordingly.</p> <p>4.2.6 On 14.1- “Regions should ensure the agenda is as relevant and simplistic as possible to the targeted audience”.</p> <p>4.2.7 On 14.3 –rephrase the resolution- “In future, the divisions should consider using in-house resources “wherever possible”.</p> <p>Item 18- international strategy: The following additional inputs were made:</p> <p>4.2.8 The Project Manager should have processed the request through the finance division.</p> <p>4.2.9 Council can't make a budget determination without a proper submission.</p> <p>4.2.10 The CEO will address the reprioritisation of projects after the mid-term review in October.</p> <p>4.2.11 The resolution on 20.2 must be deleted as is not relevant to the item.</p> <p>4.2.12 Item 21- the narrative on the item should be expanded.</p>	

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	<p>4.2.13 Item 22- a lot was said on this item; the Company Secretary should elaborate.</p> <p>4.2.14 Item 24.2, section 24.2.5-the resolution was incorrect as the parties have reached a settlement.</p> <p><b>It was resolved that the minutes of 25 September 2018 be approved with changes.</b></p>	
5.	<p><b>Legal opinion on the exclusion of the current CCC members for re-appointment:</b></p> <p>Dr [REDACTED] presented the item:</p> <p>5.1 The members of the CCC requested information on the basis that as per a legal opinion, a certain category of skills will be excluded for appointment to the CCC.</p> <p>5.2 Council raised a concern on the exclusion on the basis that this might hinder the composition of the CCC.</p> <p>5.3 Legal, Risk &amp; CCC raised reservations on the basis that sharing the legal opinion might expose information that was solely meant for Council and proposed that information be redacted.</p> <p>5.4 Council expressed a view that this might not provide a clear context to the decision of Council.</p> <p><b>Council resolved that the legal opinion be made available to the CCC members on a without prejudice basis.</b></p>	CEO
6.	<p><b>Inter Operator Disputes</b></p> <p>There are no new developments on the item.</p>	CEO
7.	<p><b>International Engagements</b></p> <p>It was resolved that the item be deferred.</p>	CEO

	Action Item	Person Responsible
8.	<p><b>CRASA/SADC</b></p> <p>It was resolved that the item be deferred.</p>	Cllr [REDACTED]
9.	<p><b>ITU</b></p> <p>It was resolved that the item be deferred.</p>	Corporate Services
10.	<p><b>Update on the Office Relocation</b></p> <p>Cllr [REDACTED] provided an update on relocation:</p> <p>9.1 Council visited the new premises.</p> <p>9.2 Procurement was ongoing for cabling, and furniture.</p> <p>9.3 The furniture award has been split into four different bidders to expedite the process.</p> <p>9.4 Every correspondence sent to stakeholders will indicate that ICASA will be relocating to Centurion.</p> <p>9.5 Finance and Human Resources divisions were busy quantifying and allocating the relocation allowance as approved by Council.</p> <p><b>It was resolved that the update on office relocation be noted.</b></p> <p><i>The GM: PRA, Manager: Cost Modelling, Manager: Wholesale Services joined the meeting at 12:44</i></p>	Relocation Committee
11.	<p><b>Request for Information: Competition 's Data Service Market Inquiry.</b></p> <p>The GM: PRA presented the item:</p> <p>The purpose of the memorandum was to request Council to approve the Authority 's proposed response to the Competition Commission 's request for information regarding its Data Services</p>	CEO

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	<p>Market Inquiry.</p> <p>10.1 The Authority received correspondence from the Competition Commission of South Africa ("the Commission") dated 31 August 2018, requesting information for its data inquiry.</p> <p>10.2 The draft response contained the following information:</p> <p>10.2.1 Clarifications on information submitted by the Authority to the Department of Telecommunications and postal Services (DTPS) on the Electronic Communications Bill, and address concerns expressed by the Authority in various submissions made to the commission.</p> <p><b>It was resolved that the request for information be approved.</b></p>	
12.	<p><b>MoU with Competition Commission</b></p> <p><b>It was resolved that the item be deferred to the next meeting of Council.</b></p> <p><i>The Specialist: Monitoring and Evaluation joined the meeting at 14:35</i></p>	CEO
	<p><b>2017/18 Annual Report and Financial Statements presentation to Parliament</b></p> <p>The Specialist: Monitoring and Evaluation presented the item:</p> <p>The purpose of the submission was to brief Council on the 2017-18 FY Annual Report presentation to the Parliament Portfolio Committee on Communications.</p> <p>The presentation included the following:</p> <p>12.1 Organisational Mandate;  12.2 Organisational Governance;  12.3 Organisational Pre -determined Objectives;  12.4 Human Capital;  12.5 Complaints and Compliance Committee;  12.6 Financials; and  12.7 Audit Action Plan.</p>	CEO



	Action Item	Person Responsible
	<p>Council requested the specialist to correct the appointment date of Cllr Kadi and the name of the previous Chairperson of the ITRC.</p> <p><b>It was resolved that the 2017/18 Annual Report and Financial Statements presentation to Parliament be approved</b></p> <p><i>Specialist: Litigation and General Legal Support and the Specialist: Regulation and Legislative drafting joined the meeting at 12:12</i></p>	
13.	<p><b>ICASA's comments on proposed Policy Direction to the Authority on Dispute Resolution for Rapid Deployment of Electronic Communications Network and Facilities ("The Proposed Policy Direction")</b></p> <p>The Specialist: Litigation and General Legal Support presented this item:</p> <p>The purpose of the submission was to advise Council of the proposed policy direction to the Authority on Dispute Resolution for Rapid Deployment of Electronic Communications Network and Facilities received from the Minister of Telecommunications and Postal Services (Minister) on 15 August 2018.</p> <p>The following were noted:</p> <p>13.1 The Minister has prepared the proposed Policy Direction to the Authority in terms of section 21 read with section 3 (2) of the Electronics Communication Act No 36 of 2005 ("ECA").</p> <p>13.2 The purpose of the policy direction is to direct the Authority to prescribe regulations on procedures and processes for resolving disputes that may arise between Electronic Communications Network Service licensee and any landowner to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.</p> <p>13.3 The Authority has prepared comments on the policy</p>	



	Action Item	Person Responsible
	<p>direction for Council's consideration and approval.</p> <p><b>It was resolved that ICASA's comments on proposed policy direction be approved.</b></p>	
14.	<p><b>Proposed responses of licensee's questions of clarity on the implementation of the End-User and Subscriber Service Charter Amendment Regulations and amendment to the reasons document.</b></p> <p><b>It was resolved that the item be deferred to the next meeting.</b></p>	Cllr [REDACTED]
15.	<p><b>Competition Commissioner v Vodacom RT15 Transversal Contract.</b></p> <p>The GM: PRA presented the item:</p> <p>The purpose of the memo was to request Council to approve a draft response to the Competition Commission of South Africa regarding its investigation of a Transversal Contract no RT15 entered into by the National Treasury and Vodacom Group (Pty) Ltd ("Vodacom).</p> <p>15.1 The Authority received correspondence from the Commission dated 25 May 2018, wherein the commission advised the Authority that it has initiated a complaint in terms of section 49B (1) of the Competition Act ,1998(Act no 89 of 1998) as amended ("the Competition Act").</p> <p>15.2 The basis of the complaint is a result of the fact that in terms of the contract, Vodacom will be the sole provider of mobile communications services to the government of the Republic of South Africa from 15 September 2016 to 31 August 2020.</p> <p>15.3 The Commission advises that this conduct is alleged to amount to an abuse of dominance by Vodacom in contravention of section 8(c) and section 8(d) (1) of the Competition Act.</p> <p>15.4 The Commission has provided the Authority with a copy of the contract and had requested the Authority 's views on the resultant competition effect of the contract in the Information Communication Sector (ICT).</p>	CEO




	<b>Action Item</b>	<b>Person Responsible</b>
	<p>15.5 Furthermore, given the confidential nature of the contract, the Commission requested the Authority 's officials tasked with analysing it for purpose of preparing a response to sign a non-disclosure agreement.</p> <p>The Commission requested the Authority to address the following questions.</p> <p>15.5.1 ICASA's view on the effect of the RT15 Transversal Contract on current and future competition within the telecommunications sector.</p> <p>15.5.2 ICASA 's view on the scope of products of the RT15 Transversal contract.</p> <p>15.5.3 Vodacom 's ability to provide the scope of products in the RT15 Transversal.</p> <p>15.5.4 Effects on the ability of SMMES and other potential Competition to enter the Telecommunication sector.</p> <p>15.5.5 What can ICASA as a Regulator do to address the imbalance that are likely to arise because of the RT15 Transversal Contract?</p> <p>15.5.6 ICASA 's view on the appropriate remedy; and</p> <p>15.5.7 Does ICASA have any existing or anticipated regulations that would minimise the effect of the RT15 on Competition?</p> <p>Council resolved that as a Regulator it does not involve itself with day to day commercial transactions of licensees. Council does not have existing or anticipated regulations to address the complaint.</p> <p><b>It was resolved the memo to Council on a draft response to the Commission be approved.</b></p>	
16.	<b>ICASA submission on the Issues Paper: A comprehensive Review of the South African Broadcasting Policy</b>	<b>CEO</b>

	Action Item	Person Responsible
	<p><b>It was resolved that this item be deferred to the next meeting of Council.</b></p>	
<p><b>17.</b></p>	<p><b>Application for the amendment and renewal of the Individual Commercial Sound Broadcasting Service Licence by RISE FM Broadcast (Pty) Ltd.</b></p> <p><b>It was resolved that this item be deferred to the next meeting of Council.</b></p> <p><i>The Chairperson of the Consumer Advisory Panel and the Two Members joined the meeting at 13:45</i></p>	
<p><b>18.</b></p>	<p><b>CAP 1<sup>st</sup> Quarter Report 2018, and the CAP Annual Performance Plan 2018/2019</b></p> <p>The Chairperson of the Consumer Advisory Panel (CAP) and the two members presented the report of the committee.</p> <p>The purpose of the report was to request Council to consider and approve the CAP 1<sup>st</sup> Quarter (01-April-30 June 2018) report, and the CAP Annual Performance Plan 2018/2019.</p> <p>The following were noted:</p> <p>18.1 Consumer Advisory Panel Members (“CAP Members”) assumed office on 1<sup>st</sup> April 2018, after being appointed in terms of the establishment of CAP Regulations of 2017.</p> <p>18.2 As per CAP Regulations, the Chairperson of CAP must appraise Council on the activities of CAP quarterly and annually.</p> <p>Matters to be considered by Council:</p> <p><b>CAP 1<sup>st</sup> Quarter Report</b></p> <p>This was a detailed account of activities undertaken by the Committee over a period of three months (April -June 2018) since its inception which included the following:</p> <p><b>Induction Workshop</b></p>	

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	<p>18.3 The induction workshop was held over a two-day session and was facilitated by external service provider. The outcome culminated into an Annual Performance Plan.</p> <p><b>2018/2019 Annual Performance Plan (APP)</b></p> <p>18.4 This detailed all the activities that CAP will embark on this financial year as per CAP mandate, which is to advise the Authority on consumer issues. Included in the APP is the interrogation of the budget allocation and additional funds required.</p> <p><b>Meeting with Stakeholders</b></p> <p>18.5 The South African Communications Forum (SACF) was the first external stakeholder to formally invite CAP to their breakfast round table discussions.</p> <p>Governance Issues raised with ICASA:</p> <p>18.6 There were several risk factors identified by CAP in their first months of operation and several mitigation strategies were proposed. The risk included the following:</p> <p>Lack of specialised resources to cater for the needs of persons with disabilities members.</p> <p>17.7.1 Inadequate financial and physical resources have led to a lack of access to important documents, such as Terms of Reference (ToRs), travelling and remuneration policies, and quality of minutes due to lack of recording material.</p> <p>17.7.2 Lack of transparency regarding procurement and remuneration of members.</p> <p>17.7.3 Lack of internal controls.</p> <p><b>Comments by Council</b></p> <p>18.7 Council appreciated and acknowledged the importance and good work done by CAP.</p>	



	<b>Action Item</b>	<b>Person Responsible</b>
	<p>18.8 Council urged CAP to assist on consumer related issues such as #Data Must Fall.</p> <p>18.9 CAP to advise on the digital divide between urban and rural areas.</p> <p>18.10 Council undertook to address all the concerns and issues raised by Chairperson of CAP.</p> <p>18.11 Because of resource constraint the secretariat function will not be outsourced, instead the current secretariat in ICASA will endeavour to assist on all CAP meetings.</p> <p>18.12 A software or laptops will be acquired to assist members who can't access important documents.</p> <p>18.13 The finance division will assist CAP with finances</p> <p><b>It was resolved that the CAP 1<sup>st</sup> Quarter Report 2018 and the CAP Annual Performance Plan 2018/2019 be approved.</b></p>	
<b>18</b>	<p><b>Digital Migration Policy</b></p> <p>It was resolved that this item be deferred to the next meeting.</p>	<b>CEO</b>
<b>19</b>	<p><b>Case Analysis-Cell C Pty v The Chairperson of ICASA and Others</b></p> <p>It was resolved that the item be deferred to the next meeting.</p>	<b>CEO</b>
<b>20</b>	<p><b>Urgent Application SKG Africa (Pty) Ltd</b></p> <p>The CEO presented the item:</p> <p>The purpose of the submission was to request Council to note the urgent application launched by SKG Africa (Pty) Limited and resolve that the Authority opposes the application.</p> <p>21 20.1 The application is for the review of the decision to award office accommodation bid to Centurion Vision Development (Pty) Ltd Limited.</p> <p>22 On the 19<sup>th</sup> September 2018, the Authority received a notice of motion in terms of which SKG seeks an order from the court on the following terms:</p> <p><b>In respect of Part A</b></p>	<b>CEO</b>

	Action Item	Person Responsible
	<p>22.1 That the matter be heard on an urgent basis, proposed date of the hearing was 02 October 2018.</p> <p>22.2 Interdicting the Authority from implementing the tender awarded to Centurion Vision Development (Pty) Ltd.</p> <p>22.3 The Authority to provide the full record of the documents for the decision.</p> <p>22.4 That the application be postponed <i>sine die</i> (without a date assigned for the hearing) or to a date to be determined by the Court and;</p> <p>22.5 Directing the Authority to pay the costs of the application.</p> <p><b>In respect of Part B</b></p> <p>22.6 Reviewing, setting aside and substituting ICASA s' decision to award the tender to Centurion Vision Development and all related administrative actions in this regard and;</p> <p>22.7 Alternatively, ICASA 's decision in this regard be reviewed, set aside and remitted for reconsideration by the Authority.</p> <p><b>It was resolved that the urgent application be opposed.</b></p>	
23	<p><b>Report on Postal Committee Meeting held in Lilongwe, Malawi from the 16-18 July 2018.</b></p> <p>It was resolved that this item be deferred to the next meeting.</p>	Cllr 
24	<p><b>International Relations Strategy for 2018/19</b></p> <p>It was resolved that this item be deferred to the next meeting.</p>	CEO
25	<p><b>Auditor General of South Africa (AGSA) Final Management Report 31 March 2018(2017/18)</b></p> <p>It was resolved that this item be deferred to the next meeting.</p>	CAE
		Chairperson



	Action Item	Person Responsible
26	<b>Closure</b>  It was resolved that all other items deferred will be considered at a Special meeting of Council.  The Chairperson thanked all present and adjourned the meeting at 17h19.	
	<b>Date of next meeting: 04 October 2018</b>	

Signed:   
(Chairperson)

Date: 06 November 2018