



Independent Communications Authority of South Africa

MINUTES OF AN ORDINARY MEETING OF COUNCIL		
Date	04 June 2019	
Time:	09h30	
Venue:	Block B, Council Boardroom	
Present		
	[REDACTED]	Acting Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
By Invitation		
	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	Manager IT Audit o.b.o CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
Partial Attendees		
	[REDACTED]	Executive: Legal, Risk and CCC
	[REDACTED]	Specialist: Risk and Compliance Management
	[REDACTED]	GM: Licensing
	[REDACTED]	Manager: Service Broadcasting
	[REDACTED]	Manager: Broadcasting Frequency
	[REDACTED]	SM: Consumer Affairs
	[REDACTED]	SM: Talent and Performance Management
	[REDACTED]	Manager: Talent and Performance
	[REDACTED]	GM: Complaints and Consumer Affairs
Apologies		
	[REDACTED]	Member
	[REDACTED]	CAE



	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>The Acting Chairperson opened the meeting at 09:30 and welcomed all present.</p> <p>The following apologies were noted:</p> <ul style="list-style-type: none"> • Cllr [REDACTED] was on sick leave. • CAE was attending training at IODSA. 	Acting Chairperson
2.	<p>Ratification of Agenda</p> <p>The following items were added to the Agenda.</p> <p style="padding-left: 40px;">i. Moderation Process of Finance Group Grievance.</p> <p>The Agenda was ratified with additions.</p>	Council
3.	<p>Declaration of interest</p> <p>No conflict of interest was noted at the meeting.</p>	All
4.	<p>Adoption of previous minutes</p>	Council
4.1	<p>Minutes of a meetings held on 02 and 21 May 2019</p> <p>It was resolved the minutes be deferred to the next meeting</p>	Council



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5.	<p>Matters arising from previous minutes</p> <p>The item was considered and updated.</p>	Secretariat/CEO
6.	<p>International Engagements</p> <p>Corporate Services team will prepare a report on International Engagements for tabling at Council.</p>	Executive:CS
7.	<p>Licensing of the IMT</p> <p>Cllr [REDACTED] presented the item:</p> <p>The following was noted:</p> <ul style="list-style-type: none"> • The Terms of Reference (ToR's) were still being considered by the CEO's office. <p>Council resolved to inform the Minister that Information Memorandum will be published by end July 2019.</p> <p>The feedback was noted</p> <p><i>The Executive: Legal, Risk and CCC joined the meeting at 10:10</i></p>	Cllr [REDACTED]
8.	<p>Public Audit Amendment Act</p> <p>Implications of the Public Audit Act.</p> <p>The purpose of the submission was to present to Council, the impact the regulations made in terms of the Public Audit Act No.25 Of 2004, as amended had and potential risks they pose on ICASA.</p> <p>The Executive: Legal, Risk and CCC presented the item:</p> <ul style="list-style-type: none"> • The Public Audit Amendment Act No.5 of 2018 having been promulgated on 20 November 2018, 	Executive: LRCCC



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	<p>came into operation on 1 April 2019, introducing a new type of non-compliance called "material irregularity".</p> <ul style="list-style-type: none"> • Material Irregularity referred to any non-compliance with, or contravention of legislation, fraud ,theft or a breach of a fiduciary duty identified during an audit performed under the Public Audit Act ,that resulted in or was likely to result in a material financial loss, the misuse or loss of a material public resource or substantial harm to a public sector institution or the general public. <p>The Public Audit Amendment Act amended the Public Audit Act, to <i>inter alia</i>:</p> <ul style="list-style-type: none"> • Provide for the Auditor General to refer suspected material irregularities arising from an audit performed under Public Audit Act, to a relevant public body for investigation. • Empower the Auditor-General to take appropriate remedial action; and • Provide for the Auditor-General to issue a certificate of debt where an accounting authority failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt. <p>When material irregularity occurred, the Auditor - General was legally mandated to take remedial action against an institution which would have committed the non-compliance.</p> <p>The following was resolved:</p> <ul style="list-style-type: none"> • Council should set the tone on responsibility within the organization. • There should be credible and frequent reporting on SCM matters. • The implications of the Amendment Act should be widely shared. 	



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	<ul style="list-style-type: none"> • Consequence Management should be undertaken. • Liability management for directors should be revisited. • Professional liability Insurance submission should be tabled at Council. • The submission should include benchmarking with other "Chapter 9" institutions. <p>The report was noted.</p> <p><i>The GM: Licensing, Manager: Service Broadcasting Manager: Broadcasting Frequency joined the meeting at 11:29.</i></p>	
C1.1	<p>SABC: Application for amendment of Radio Frequency Spectrum Licences of Thobela FM, Motsweding FM, RSG and SAFM</p> <p>The purpose of the submission was to request Council to approve the Radio Frequency Spectrum Licence amendment applications submitted by the South African Broadcasting Corporation (the Applicant).</p> <p>The GM Licensing presented the item:</p> <ul style="list-style-type: none"> • On 17 October 2018, ICASA received applications for the amendment of the Radio Frequency Spectrum Licences held by the Applicant. • The Applicant was proposing to relocate all its services from Blouberg transmitter site to Tolwe transmitter, increase the Effective Radiated Power (ERP) of these services from 0.2 to 10 kW and de-commission the Blouberg transmitter. • Four of the Applicants 'services were affected by the relocation namely Thobela FM, Motsweding FM, Radio Sonder Grense (RSG) and SAFM. • Thobela FM was currently licenced to 	CEO



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	<p>broadcasting Tolwe and Blouberg transmitter sites. The Applicant was also requesting to switch off Thobela FM services at Blouberg transmitter site.</p> <ul style="list-style-type: none"> • The applicant submitted that the Blouberg transmitter was inaccessible by vehicle and it was risky to access the site since there was no helipad on the top of the mountain. • The Blouberg transmitter site was also powered by a solar system and a generator that runs on diesel fuel. • The Applicant 's signal distributor was also planning to decommission the Blouberg transmitter site. <p>The following was resolved:</p> <ul style="list-style-type: none"> ▪ The division should confirm whether the frequency overspill to neighboring countries will be higher. ▪ Coordinate with Botswana on the frequency. <p>It was resolved that the submission be retabled after coordination with Botswana government.</p>	
C1.2	<p>Lifting of the Moratorium on Community Sound Broadcasting Licence Applications</p> <p>The purpose of the submission was to provide Council with the proposed implementation plan of the reviewed Community Framework Regulations once the moratorium had been lifted.</p> <p>The GM: licencing, Manager: Service Broadcasting and Manager: Broadcasting Frequency presented the item.</p> <ul style="list-style-type: none"> • On 22 September 2015, the Authority issued a 	CEO



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	<p>moratorium in respect of applications for both class community sound broadcasting service licences and radio frequency spectrum licences for purposes of providing a community sound broadcasting service. In the notice the Authority indicated that the moratorium was necessitated by:</p> <ul style="list-style-type: none"> ✓ A scarcity of analogue radio frequencies; ✓ The Authority was currently reviewing the Licensing Processes and Procedures Regulations wherein it intended to process registrations for class community broadcasting licenses in two intervals per year; and ✓ The Authority intended to develop a new regulatory framework for community broadcasting during the 2016/17 financial year. <p>As part of Council approval, Council requested an implementation plan to put in place after the final lifting of the moratorium.</p> <p>The following was resolved:</p> <ul style="list-style-type: none"> ▪ The terminology on the submission should be corrected. <p>The proposed implementation plan was approved.</p>	
C1.3	<p>K2015351513 SA (Pty) Ltd: Application for a Trial radio Frequency Spectrum Licence in the 3.7 GHz(3680-3740MHz) Band</p> <p>The purpose of the submission was to approve the application submitted by K2015351513 SA (Pty) Ltd ('the applicant') for a Trial Radio Frequency Spectrum Licence in the 3.7 GHz (3680-3740MHz) band.</p> <p>The Manager: Broadcasting Frequency presented the item:</p>	CEO



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	<ul style="list-style-type: none"> • The applicant was the holder of an Individual Electronic Communications (I-ECS) and Individual Electronic Communications Network (I-ECNS) service licences. • The applicant applied for a Trial Radio Frequency Spectrum Licence in the 3.7 GHz (3680-3740 MHz) band on 28 November 2018. • On 23 April 2019, the Authority rejected the application due to unavailability of the spectrum in the band applied for. • On 02 May 2019, the applicant submitted an amended application for a Trial Radio Frequency Spectrum Licence in the 3690-3740 MHz band. • The applicant requests permission to conduct Proof of Concept and to do trials in the 3.7 GHz (3680-3740) band. • For the applicant to evaluate specific equipment suitability and performance in 3.7 GHz band, the applicant needed to test and trial such equipment un a "real" network environment situation. • The 3.7 GHz (3680-3740 MHz) frequency band was currently primarily used for fixed satellite services, sharing with terrestrial point to point fixed services on a coordinated basis. • Similar applications had been approved for Telkom, Cell Vodacom and other entities and there were no grounds for deviation. <p>The following was resolved:</p> <ul style="list-style-type: none"> • The CP Test should be limited to less than ten (10) sites. • The test should be done on rooftop. 	

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	The application was approved with inputs	
9.	<p>Appointment of the Chairperson of the Consumer Advisory Panel</p> <p>The purpose of the submission was to appoint the CAP Chairperson.</p> <p>The GM: Consumer and Complaints Affairs presented the item:</p> <ul style="list-style-type: none"> • The resignation of the former CAP Chairperson had created a vacancy and that had to be filled. • Council resolved at the meeting of 21 May 2019, to be furnished with CV's of all CAP members except for [REDACTED] so that Council can decide on who within the ten CAP members had the strength to be appointed the Chairperson of CAP. • After careful consideration, two candidates Ms. [REDACTED] and Mr. [REDACTED] were nominated by Council. <p>Upon further consideration the following was resolved:</p> <ul style="list-style-type: none"> ✓ [REDACTED] be appointed as the Chairperson of Consumer Advisory Panel for the remainder of the term served by the former Chairperson which will expire in 2021. ✓ If [REDACTED] was unable to take the position of Chairperson of CAP, the second candidate nominated by Council [REDACTED] should be appointed to the position. 	CEO
D1	Recommendation by CCC in the matter between the Compliance and Consumer Affairs and Giyani	Cllr [REDACTED]

	Action Item	Person Responsible
	<p>Community Radio</p> <p>The purpose of the submission was to table the recommendation of the CCC on the matter between CCA and Giyani Community Radio.</p> <p>Cllr [REDACTED] presented the item:</p> <ul style="list-style-type: none"> • On 25 January 2019, the CCA lodged a complaint against Giyani Radio Station alleging the following: <ul style="list-style-type: none"> ✓ Mr. Maswanganyi, a community member of the Giyani Community Radio alleged that the licensee failed to broadcast news accurately, fairly and truthfully in that, on 1 November 2018 in a news broadcast by the Radio Station he was referred to as "<i>nsulavoya</i>" loosely translated as "an armed thief"). ✓ That the licensee failed to keep the record of broadcast of programmes in accordance with section 53 of the ECA, as requested by the CCA to enable investigation of the complaint. ✓ The CCC found both contraventions to be serious in nature and made a finding against Giyani Community Radio. <p>Recommendation to Council</p> <ul style="list-style-type: none"> • Council recommended that Giyani Community Radio Station be fined R20 000 of which R10 000 be suspended for three years from the issue of this order. The fine must be paid to ICASA before 01 August 2019. • That if Giyani Radio Station was found to have contravened section 53(1) (a) of the ECA, within 	



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	<p>three years from the date of the order issued by ICASA, the suspended fine should come into effect.</p> <ul style="list-style-type: none"> • That Giyani Radio Station be ordered to broadcast the prescribed apology, as a first item of its news after 07:00 on the first Monday-Friday after the issue of the order, in Tsonga and English directly after each other. • That an electronic copy of the broadcast ordered be copied to ICASA within seven working days after the broadcast, accompanied by an affidavit by Station Manager that the apology was broadcasted -including the time and dates thereof. <p>The CCC recommendation was approved</p>	
<p>D2.</p>	<p>Recommendation by the Compliance and Consumer Affairs Division of ICASA and Linkinc Telecommunications (Pty) Ltd.</p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between CCA and Linkinc.</p> <p>Cllr [REDACTED] presented the item:</p> <p>On 22 October 2018 the CCA received a complaint that Linkinc failed to obtain prior written permission of the Authority before transferring the control of its ECS and ECNS licences and that conduct amounted to contravention of section 13(1) of the ECA.</p> <p>The CCA referred a complaint with the CCC for investigation.</p> <p>CCA alleged that Linkinc transferred the control of its ECS and ECNS licenses from Philip John Scheel and Simone Nicole Halcrow to Fayzel Kader Hoosen without</p>	<p>Cllr [REDACTED]</p>



	Action Item	Person Responsible
	<p>having obtained the prior written permission of the Authority. The change in the shareholding structure translated to, Fayzel Kader Hoosen acquiring control of 100% shareholding in Linkinc.</p> <p>Recommendation to Council</p> <p>The CCC recommended that Council issued the following in terms of 17E (2) of the ICASA Act:</p> <p>1. That the transfer of controlling share to Linkinc was null and void from the outset.</p> <p>2. Direct Linkinc to do the following:</p> <ul style="list-style-type: none"> ▪ Immediately cancel the registration (if that was done) following upon the transfer of control with the Companies and Intellectual Property Commission and copy ICASA with such cancellation and de-registration with the CIPC. ▪ Re-apply to ICASA for the transfer of control, if Linkinc again resolved to do so. ▪ Awaits the resolution of the Council of ICASA in that connection. <p>The recommendation was approved</p>	
E4.1	<p>Public Protector's Report</p> <p>The purpose of the submission was to present to Council the Public Protectors' Report on the investigation into maladministration, procurement and human resources irregularities by ICASA.</p> <p>On 26 February 2019, the Authority received a letter from the Office of the Public Protector. The Public Protector requested a comprehensive report and responses to allegations of maladministration by the Authority</p>	CEO



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	<ul style="list-style-type: none"> • Subsequently, on 08 March 2019, the Authority received the Public Protector’s preliminary finding, together with a notice in terms of section 7(9) (a) of the Public Protector Act ,1994 which notice seeks to afford persons against whom adverse findings were made, the opportunity to respond. The Authority subsequently responded to the preliminary finding and section 7 (9) (a) notice on 03 April 2019. • Thereafter, on 03 May 2019, the Authority received a copy of the Public Protector ‘s Report. • The Report made some adverse findings against the Authority and recommended remedial action. <p>It was resolved that the Authority abide by the Report of the Public Protector and implement the remedial action accordingly.</p> <p>Council further resolved the following:</p> <ul style="list-style-type: none"> • Approval of ICASA’s implementation plan for submission to the Public Protector; and • That the Authority should institute civil proceedings against the former CEO for the recovery of expenses incurred irregularly due to his conduct in violation of the PMFA. 	
F1.	<p>Auditor-General Management Report</p> <p>The purpose of the submission was to appraise Council on the Auditor-General of South Africa Interim Report for 2018-2019.</p> <p>The CEO presented the item:</p> <ul style="list-style-type: none"> • [REDACTED] 	CFO

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	<p>[REDACTED]</p> <ul style="list-style-type: none"> • [REDACTED] • [REDACTED] <p>The following findings were made</p> <ul style="list-style-type: none"> ✓ [REDACTED] ✓ [REDACTED] ✓ [REDACTED] ✓ [REDACTED] ✓ [REDACTED] 	

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	<p>✓ [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p> <p>Management was addressing most of the challenges for the final report.</p> <p>The report was noted.</p>	
F3.	<p>Annual Training on Competition and regulation for the Digital Era.</p> <p>The submission was withdrawn.</p>	Cllr [REDACTED]
G.	General	All
G.1	<p>Moderation Process of Finance Group Grievance</p> <p>Council was requested to nominate Councillors to perform moderation process of the group of employees from finance division scheduled for 05th June 2019.</p> <p>It was resolved that Cllrs [REDACTED] and [REDACTED] will perform the moderation of the group.</p>	Council
10.	<p>Closure</p> <p>The Acting Chairperson thanked all who attended the meeting and adjourned at 14:20</p>	Acting Chairperson
11.	Date of next meeting: 11 June 2019	Secretariat



Signed: _____ Date: 16 July 2019

(Chairperson)