



Independent Communications Authority of South Africa

MINUTES OF A SPECIAL COUNCIL MEETING		
Date	26 August 2021	
Time:	17:10	
Venue:	Microsoft Teams	
Present	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
By Invitation	[REDACTED]	CEO
	[REDACTED]	CAE
	[REDACTED]	Acting Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
Partial Attendees	[REDACTED]	Executive: PRA
	[REDACTED]	Executive: Licensing and Compliance
	[REDACTED]	Executive: Corporate Services
	[REDACTED]	Acting Executive: Engineering and Technology
	[REDACTED]	Acting Executive: Legal, Risk & CCC
	[REDACTED]	Executive: Corporate Services
	[REDACTED]	Snr Manager: Com. & IR
	[REDACTED]	External legal team
	[REDACTED]	External legal team
Apologies		

No.	Action Item	Person Responsible
1.	<p>Opening and apologies</p> <p>The Chairperson opened the meeting at 17:10 and welcomed all present.</p> <p>Apologies</p> <p>No apologies were noted.</p>	Chairperson
2.	<p>Ratification of the agenda</p>	Council
3.	<p>Declaration of interest</p> <p>No conflict of interest was noted.</p>	Council
4.	<p>Licensing of IMT (“Standing Item”)</p> <p>The Chairperson and the CEO gave the following brief update on the latest developments on spectrum auction settlement negotiations:</p> <p>4.1. Subsequent to the last Council meeting, the Authority received a letter from e.tv, whereby they indicated that they will not settle.</p> <p>4.2. On 25 August 2021, the Chairperson, acting Corporate Secretary and Executive: Engineering and Technology met in Cape Town with the Chairperson, the CEO, and Chief Technology Officer of e-media.</p> <p>4.3. In the abovementioned meeting, the Authority and e.tv were able to make some progress towards settlement, whereby issues critical to the spectrum auction proceeding, were discussed. The IMT auction and WOAN issues were dealt with separately. E.tv requested for a consultation of a period of ninety (90) days on the issue of WOAN. Should interested parties not be satisfied with the outcomes of the consultations, the matter will be taken for arbitration or to court.</p> <p>4.4. Following the above-mentioned meeting, e.tv circulated an email summarising the following issues, that outlined what e.tv was requesting from the Authority and from the Minister:</p>	

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	<p data-bbox="359 360 1236 506">4.4.1. ICASA and the Minister shall ensure that e.tv, will not be required to vacate any portion of the analogue spectrum, which is currently licensed to it until the process of digital migration has been completed.</p> <p data-bbox="359 544 1236 797">4.4.2. For the purposes of this order, digital migration will be taken to be “<i>complete</i>” on an area-by-area basis and only once 85%, of the population in the relevant area to which this spectrum relates have access to the necessary reception equipment to access the e.tv broadcast via a digital signal on a free-to-air basis.</p> <p data-bbox="359 835 874 875">4.4.3. ICASA acknowledges that:</p> <p data-bbox="491 913 1225 1093">4.4.3.1 The State has an obligation to ensure universal access of the public to free television broadcast services (including that of e.tv) on a technology neutral basis; and</p> <p data-bbox="491 1131 1177 1238">4.4.3.2 It did not consult with e.tv prior to the commencement of the ITA and WOAN auctions.</p> <p data-bbox="359 1276 1236 1827">4.4.4. Accordingly, ICASA and the Minister will engage in good faith consultations with e.tv in relation to the issue of whether 5G spectrum in the bands IMT700 to IMT850, should be made available to broadcasters such as e.tv for the purposes of the State discharging its obligations as set out above (“the consultation process”). During the consultation process, the following shall be taken into account : (i) the fact that the National Radio Frequency Plan of 2018 provides that IMT 700 to IMT850 may be used for broadcasting as well as IMT services, (ii) broadcasting on 5G will reduce potential congestion of spectrum in this band, and (iii) broadcasting on 5G will meet ITU standards so as not to interfere with the use of these bands for IMT services.</p> <p data-bbox="359 1865 1236 2045">4.4.5. Pending the conclusion of the consultation processes, the Minister will not seek to amend the National Radio Frequency plan to prohibit broadcasting on 5G spectrum in the bands IMT700 to IMT850, nor will ICASA proceed with the WOAN</p>	

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	<p>auction until the consultation process has been concluded.</p> <p>4.4.6. In the event that e.tv believes that the consultation processes have not been conducted in good faith, and/or there has not been proper consideration to the issues raised by e.tv, it may refer any dispute in this regard to court or to arbitration in terms of the commercial rules of the Arbitration Foundation of South Africa for expedited determination.</p> <p>4.4.7. Within 30 days of the completion of the consultation process (subject to clause (f)), ICASA shall issue its findings on the consultation process and its decision on whether or not the WOAN ITA will be amended and reissued together with reasons for its decision.</p> <p>4.4.8. Should ICASA decide to amend and reissue the WOAN ITA pursuant to the consultation process, it shall do so within 20 days of announcement of its decision regarding the output of the consultation process.</p> <p>4.5 The Authority noted that definition of what constitutes a “complete” digital migration, ‘was different from the definition cited in the main Telkom draft order.</p> <p>4.6 The Authority reiterated that, a public consultation process was undertaken, and e.tv chose not to participate in the process for reasons unknown to the Authority.</p> <p>4.7 The Authority indicated that, approval of the National Radio Frequency Plan is the responsibility of the Minister. Furthermore, chances of broadcasters being assigned 5G spectrum band above 700Mhz band are slim. The European Broadcasting Union has also indicated that, the 5G broadcast will be implemented in the sub 700Mhz band.</p> <p>Following comments were made:</p> <p>4.8 Even if the Authority concedes to the request for 5G spectrum in the bands IMT700 to IMT850 being made available to broadcasters such as e.tv, the request for the band to be made</p>	

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	<p>available for broadcasting services, will not be achieved in the foreseeable future.</p> <p>4.9 Council sought clarity on the definition of area-by area.</p> <p>4.10 Further clarity was sought on how, and who will evaluate that 85% of the population in a relevant area to which this spectrum relates to, have access to the necessary reception equipment to access the e.tv broadcast via a digital signal on a free-to-air basis.</p> <p>4.11 Council noted that the percentage of when digital migration will be rendered as complete has been amended from 100% to now 85%, the reason for the amendment was sought.</p> <p>4.12 Most of the requests listed by e.tv are mainly in the jurisdiction of the Minister and not the Authority.</p> <p>4.13 Should the Authority concede to the other requests made by e.tv, but reject the request to delay the WOAN auction, until the consultation process has been concluded. Clarity was sought on whether this will result in a new litigation process, as the issue of WOAN was not part of the initial court papers.</p> <p>4.14 In the main, e.tv states that should they agree to the settlement, will the Authority allow free-to-air broadcasters an opportunity on a ninety (90) days period to consult on the WOAN auction prior to the publication of the WOAN ITA.</p> <p>4.15 The request by e.tv for the Minister not to amend the National Radio Frequency plan to prohibit broadcasting on 5G spectrum in the bands IMT700 to IMT850, should be made during the consultation process not afterwards.</p> <p>4.16 Council noted with concern that, conceding to the request by e.tv to consultation on 5G spectrum for free-to-air broadcasters, might upset other litigants.</p> <p>Council resolved that a proper writeup addressing all issues, including technical issues directed to the Authority on the e.tv proposed settlement order must be drafted. The writeup will be shared to Councillors by email, and subsequently incorporated into the draft order.</p>	

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5	<p data-bbox="260 353 719 392">2020/21 ICASA Annual Report</p> <p data-bbox="260 465 1230 539">The purpose of the submission was to request Council to approve the Authority's Annual Report for the 2020/21 financial year.</p> <p data-bbox="260 577 1230 651">Executive: Corporate Services and Senior Manager: Com. & IR presented the item:</p> <p data-bbox="260 725 1230 869">5.1 Section 55 of the Public Finance Management Act No. 1 of 1999 enjoins ICASA, as a public entity, to prepare an annual report on the activities of the organisation during that financial year.</p> <p data-bbox="260 907 1230 1093">5.2 The process of preparing the 2020/21 Annual Report has been completed, and it is ready for submission to the Minister of Communications and Digital Technologies, Office of the Auditor General, National Treasury and Parliament on 31 August 2021.</p> <p data-bbox="260 1131 1187 1169">5.3 The Annual Report is divided into six (6) sections, namely;</p> <p data-bbox="360 1207 746 1245">5.3.1 General Information;</p> <p data-bbox="360 1283 815 1321">5.3.2 Performance Information;</p> <p data-bbox="360 1359 639 1397">5.3.3 Governance;</p> <p data-bbox="360 1435 911 1473">5.3.4 Human Resource Management;</p> <p data-bbox="360 1512 1090 1550">5.3.5 Complaints and Compliance Committee; and</p> <p data-bbox="360 1588 759 1626">5.3.6 Financial Information.</p> <p data-bbox="260 1700 531 1738">Recommendation</p> <p data-bbox="260 1776 1230 1850">It is recommended that Council approve the Authority's Annual Report for the 2020/21 financial year.</p> <p data-bbox="260 1924 767 1962">Following comments were made:</p>	<p data-bbox="1257 353 1426 459">CEO/Exec: Corporate Services</p>

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	<p>5.4 Watermarks must be removed from images published in the Annual Report.</p> <p>5.5 Council noted that photos of previous Councillors and the previous Chief Financial Officer (CFO) were not included in the Annual Report, even though they were still working at ICASA in the previous financial year.</p> <p>5.6 Council requested that the image of the previous CFO [REDACTED] be included in the Annual Report, as he was the accounting officer during the period.</p> <p>5.7 Inputs on the Annual Report will be circulated to the Executive: Corporate Services and Snr Manager: Com & IR by email.</p> <p>The recommendation was approved by Council.</p>	
6.	<p>Sixth Amendment to the ICT COVID-19 National Disaster Regulations</p> <p>The purpose of this submission was to request Council to approve the amendments to the Information and Communications Technology (“ICT”) COVID-19 National State of Disaster Regulations (“COVID-19 Regulations”).</p> <p>The Executive: PRA presented the item.</p> <p>6.1 On 6 April 2020, the Authority published the COVID-19 Regulations. The purpose of the COVID-19 Regulations is to prescribe minimum standards that Licensees must adhere to only during the subsistence of the National State of Disaster in order to –</p> <p>6.1.1 Facilitate the dissemination of information required for dealing with the National Disaster;</p> <p>6.1.2 Enable the facilitation of the national response to the National State of Disaster, post-disaster recovery and rehabilitation;</p> <p>6.1.3 Enable implementation of measures that may be necessary to prevent an escalation of the National</p>	Cllr [REDACTED]

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	<p>Disaster or to alleviate, contain and minimise the effects of the National Disaster; and</p> <p>6.1.4 Ensure that there is a continuation of the provision of services in the Republic.</p> <p>6.2 On 23 April 2021, the Authority published the notice inviting representations from interested parties, on the review of the COVID-19 Regulations.</p> <p>6.3 Written representations received by the Authority during the review of the Regulations supported the need for the extension of the validity period of the temporary spectrum, inter alia, until 3 months after the end of the National State of Disaster, or alternatively until the process of assigning new high demand spectrum is completed, whichever is later.</p> <p>6.4 Having considered that the representations received, the Authority resolved to extend the duration of the temporary radio frequency spectrum by a period of three (3) months (i.e. 1 June to 31 August 2021), or three (3) months after the termination of the National State of Disaster, whichever happens first, based on the current obligations.</p> <p>6.5 Upon conclusion of the public consultation process, the Authority published the Fifth Amendment to the COVID-19 Regulations on 28 May 2021.</p> <p>6.6 The temporary spectrum was assigned by the Authority in order to enable licensees to deal with the anticipated rise in demand for network capacity or data services.</p> <p>6.7 It should be noted that IMT spectrum bands were assigned on a temporary basis. The validity of the temporary spectrum will come to an end on 31 August 2021.</p> <p>6.8 Licensees should be required to pay prorated spectrum fees during the three (3) months extension for the use of the temporary spectrum.</p> <p>6.9 The licensees should not be required to extend, the number of months that they will be required to maintain the virtual classrooms platforms for an additional three-month period.</p>	

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	<p>6.10 Vodacom's request for an extension of the temporary spectrum licences;</p> <p>6.10.1 On 19 August 2021, the Authority received a request from Vodacom for its temporary spectrum licences to be extended until 3 months after the end of the national state of disaster, or alternatively 3 months after the permanent licensing of the spectrum, whichever is later.</p> <p>6.10.2 Vodacom submitted that the Authority is bound by the Minister's Policy Direction dated 26 March 2020, to make the unassigned temporary spectrum available during the subsistence of the COVID-19 national disaster unless it is impossible for ICASA to do so.</p> <p>6.10.3 There is no basis for Vodacom's contention that the Authority is mandated, and bound by the Minister's Policy Direction. The Authority is only subject to the Constitution and the law. It is not bound by the directives, and it may deviate from them and act independently as it is in law obliged to do.</p> <p>6.11 Telkom's request for an extension of the temporary spectrum licences;</p> <p>6.11.1 On 20 August 2021, the Authority also received a request from Telkom for its temporary spectrum licences to be extended until the lifting of the national state of disaster, or the permanent licensing of the unassigned high demand spectrum, whichever is first.</p> <p>6.11.2 Telkom submitted that it is extensively utilising the temporary spectrum to provide essential services. It also submitted that the temporary spectrum is critical in meeting the capacity requirements of consumers, businesses, government, students and learners occasioned by the COVID-19 pandemic.</p>	

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	<p>6.12 MTN's request for an extension of the temporary spectrum licences;</p> <p>6.12.1 On 23 August 2021, the Authority also received a request from MTN, inquiring whether the Authority would grant an extension to the temporary spectrum as well as spectrum pooling.</p> <p>6.12.2 It was MTN's submission that it would be irrational for ICASA not to extend the temporary spectrum licences, and spectrum sharing agreements beyond 31 August 2021.</p> <p>6.12.3 MTN further submitted that the expiry of the temporary licence during the subsistence of the COVID-19 pandemic would, inter alia:</p> <p>6.12.3.1 Come at a significant cost to both MTN and the consumers;</p> <p>6.12.3.2 Be contrary to the public interest objectives of the ECA;</p> <p>6.12.3.3 Be contrary to the Minister's Direction – that directed ICASA to licence available spectrum on a temporary basis for the duration of the COVID-19 national disaster.</p> <p>6.13 Minister's view on the extension of the temporary spectrum licences;</p> <p>6.13.1 The Minister in her letter dated 25 May 2021, expressed a view that the use of radio frequency spectrum assigned on a temporary basis, should be valid for the duration of the COVID-19 disaster period or the conclusion of the ITA on the Spectrum Auction, whichever occurs first.</p> <p>6.13.2 However, the Authority in its letter dated 27 May 2021 advanced its reasons for having deviated from the Minister's Policy Direction and from the Minister's subsequent proposal.</p>	

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	<p>6.14 The Authority has been extending the duration of the temporary spectrum since 2020. It is important for the licensees to wind up their operations on the temporary spectrum, and to notify consumers about their services and products – pursuant to the expiry of the temporary spectrum licences.</p> <p>6.15 The extension of the validity of the regulations, will be for a period starting from 31 August 2021 to 30 November 2021.</p> <p>6.16 The three (3)-month period will also provide ICASA an opportunity to finalise a process for a permanent assignment of IMT spectrum bands. However, the Authority should not extend any further, the utilisation of the temporary radio frequency spectrum beyond 30 November 2021.</p> <p>6.17 The licensees with spectrum sharing agreements approved by the Authority in terms of COVID-19 Regulations, must also wind up their operations with respect to their spectrum sharing agreements, on or before 30 November 2021.</p> <p>6.18 The Authority should not approve any spectrum sharing agreements, or further extension of the spectrum sharing agreements in terms of the COVID-19 Regulations beyond 30 November 2021.</p> <p>Recommendation</p> <p>It was recommended that Council approves –</p> <p>6.19 The sixth amendments to the COVID-19 Regulations; and</p> <p>6.20 The letter to the Minister of Communications and Digital Technologies.</p> <p>Following comments were made:</p> <p>6.21 Council enquired if it was not prudent to issue new invitations for the application of temporary spectrum, considering the predicted coming COVID-19 fourth (4th) wave.</p> <p>6.22 Council sought confirmation that no further extension beyond this one will be given to licensees.</p>	

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	<p>6.23 Council sought clarity on the monitoring compliance, obligations, and the quantifying of costs of virtual classroom platforms by licensees.</p> <p>The recommendation was approved by Council.</p>	
7	<p>Invitation to the Minister to be Keynote Speaker at 5G Forum Committee Public Event</p> <p>Council deferred the submission to the next Council meeting.</p>	Cllr [REDACTED]
8	General	
9	<p>Closure</p> <p>The Chairperson thanked all present at the meeting and closed the meeting at 19:38.</p>	Chairperson
10	Date of next meeting: TBA	Secretariat

Signed: [REDACTED]
 (Chairperson)

Date: 12 October 2021