



**Independent Communications Authority of South Africa**

<b>MINUTES OF AN ORDINARY COUNCIL MEETING</b>		
<b>Date</b>	<b>28 April 2021</b>	
<b>Time:</b>	<b>08:00</b>	
<b>Venue:</b>	<b>Microsoft Teams</b>	
<b>Present</b>	[REDACTED]	Chairperson
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
	[REDACTED]	Member
<b>By Invitation</b>	[REDACTED]	CEO
	[REDACTED]	CFO
	[REDACTED]	CAE
	[REDACTED]	Corporate Secretary
	[REDACTED]	Secretariat Officer
	[REDACTED]	Secretariat Officer
<b>Partial Attendees</b>	[REDACTED]	Executive: Human Resources
	[REDACTED]	SM: Talent and Performance Management
	[REDACTED]	Remuneration and Benefits Specialist
	[REDACTED]	SM: Spectrum Management
	[REDACTED]	HR/ REMCO Chairperson
<b>Apologies</b>	[REDACTED]	Member
	[REDACTED]	Member

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No.	Action Item	Person Responsible
1.	<p><b>Opening and apologies</b></p> <p>The Chairperson opened the meeting at 08h00 and welcomed all present.</p> <p>1.1. Cllr [REDACTED] was attending the Complaints and Compliance Committee (CCC); and</p> <p>1.2. Cllr [REDACTED] was on leave.</p> <p><b>The opening and apologies were noted.</b></p>	Chairperson
2.	<p><b>Declaration of interest</b></p> <p>No conflict of interest was noted.</p>	Council
3.	<p><b>Ratification of the Agenda</b></p> <p>3.1. The following items were deferred to the next meeting of Council:</p> <p>3.1.1 Minutes of Council: 13 April 2021;</p> <p>3.1.2 Matters Arising;</p> <p>3.1.3 Item C2.1;</p> <p>3.1.4 Item C 2.2;</p> <p>3.1.5 Item D2; and</p> <p>3.1.6 Item E5.1.</p> <p><b>The ratification of the agenda was noted.</b></p>	All
4.	<p><b>Licensing of IMT (“Standing Item”)</b></p> <p>The Executive: Legal Risk and CCC introduced the external Senior Counsel (SC) and the legal team providing legal services to the</p>	LRCCC

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No.	Action Item	Person Responsible
	<p data-bbox="244 463 1244 533">Authority with regards to the International Mobile Telecommunications (IMT) litigation.</p> <p data-bbox="244 566 1244 674">The purpose of the presentation was to provide an update to Council with regards to the litigation and, particularly, the settlement discussions with e.tv, Vodacom and MTN in the Telkom/ICASA matter.</p> <p data-bbox="244 745 1244 815">4.1. The main developments on the proposed settlements were as follows:</p> <p data-bbox="360 857 1244 1048">4.1.1 Telkom indicated that it will not be participating in settlement discussions. This meant that the ICASA's application for an appeal will proceed and will adjudicated upon by the relevant court. The Authority will await the outcome thereof.</p> <p data-bbox="360 1093 1244 1249">4.1.2 e.tv proposed that, should the licensing process proceed prior to the migration of broadcasters out of the IMT700 and IMT800 bands, e.tv would seek financial compensation.</p> <p data-bbox="244 1292 1244 1400">4.2. The settlement negotiations were guided by the objective of proceeding with the auctioning of the spectrum, and finding ways of avoiding any harms that e.tv claims it would suffer.</p> <p data-bbox="244 1442 1244 1688">4.3. The SC indicated that, after several discussions, e.tv and the Authority came to "an in principle settlement agreement" on the matter, and also crafted a draft order which read as follows;" <i>in the event that Part C of Telkom's application is dismissed, ICASA will not license operators to commence using the IMT700 and IMT800 used by e.tv</i>", until the migration process is completed.</p> <p data-bbox="244 1776 1244 1883">4.4. There were still ongoing discussions between MTN and Vodacom. An update will be provided as soon as parties reach common ground.</p> <p data-bbox="244 1926 1244 2033">4.5. The SC further expressed that it is to the benefit of the Authority and that of the general public to settle with MTN and Vodacom prior to the Telkom matter being heard.</p>	



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	<p>4.6. The SC also indicated that, there is nothing in law that prohibits the amendment of the ITA in the event that ICASA is minded to do so. The benefit of the amended or agreed terms of the ITA will limit any risk of litigation on the matter.</p> <p><u>Comments and Inputs</u></p> <p>4.7. Council proposed that the wording in the draft settlement agreement should be changed to reflect that, <b><u>“will not allow licensed mobile operators to commence...”</u></b> as compared to <b><u>“will not license operators”</u></b>.</p> <p>4.8. Council discussed the possibility of including the IMT2300 in the event that the ITA was to be amended. However, upon further reflection, and awaiting the outcome of the feasibility study, Council flagged the inclusion of the IMT2300 as another risk of litigation, which will delay the licensing process further.</p> <p>4.9. In relation to the pending appeal, the SC indicated that the legal team has written to the Judge’s office requesting a date, and there has been no response to date.</p> <p>4.10. The legal team will write to the Deputy Judge President requesting that the matter either be heard by another judge if Justice Baqwa is not available, or that the Deputy Judge President issue a directive to Justice Baqwa to engage with the legal teams so that the application can be heard.</p> <p><b>The submission was noted by Council.</b></p>	
5.	<p><b>Application for the renewal of an Individual Commercial Sound Broadcasting Service and Radio Frequency Spectrum Licences by Classic FM South Africa (Pty) Ltd</b></p> <p>The Senior Manager: ICT Licensing presented the item.</p> <p>The purpose of the submission was to recommend that Council approve an application by Classic FM South Africa (Pty) Ltd (the Applicant) for the renewal of their Individual Commercial Sound</p>	<p>Cllr</p> <p></p>

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No.	Action Item	Person Responsible
	<p>Broadcasting Service (I-CSBS) and the Radio Frequency Spectrum (RFS) Licences.</p> <p>5.1. The Applicant holds both I-CSBS and RFS Licences for the provision of Commercial Sound Broadcasting Services in Johannesburg, Gauteng Province.</p> <p>5.2. On 13 June 2018, the Classic FM submitted an application to renew its I-CSBS and RFS Licences.</p> <p>5.3. On 29 January 2019, the Authority published the Applicant's renewal application in the General Notice No 643 under Government Gazette No 42196, inviting interested persons to make written representations within fourteen (14) working days.</p> <p>5.4. Upon the analysis of the application, the Licence Renewal Committee (the Committee) was of the view that the Applicant contravened Section 65 (2)(c) of the Electronic Communications Act (ECA) that prescribes the limitations on ownership and control of commercial broadcasting services, and referred the matter to the Complaints and Compliance Committee (CCC) for adjudication.</p> <p>5.5. On 23 January 2020, the CCC made recommendations to Council stating that the Applicant did not contravene section 65 (2) (c) of the ECA, and that the CCC was not bound by the previous similar judgment in the matter between <i>KZN Talk Radio</i> and PRIMEDIA (KZN Talk).</p> <p>5.6. Subsequent to receiving the CCC recommendations, Council sought a legal opinion on the application of section 65 (2) (c), and the applicability of the KZN Talk judgement on the Classic FM application.</p> <p>5.7. The legal opinion confirmed that, based on the KZN Talk Judgment, 20% equity shareholding in a broadcasting service licensee amounts to control and that the CCC was bound by the KZN Judgment.</p>	



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	<p>5.8. On the basis of the legal opinion, Council resolved that Classic FM should be directed in terms of section 17D (4), read with section 17D(2)(a) and (c) of the ICASA Act, to remedy the breach of section 65(2) (c) of the ECA and desist from any further contravention of the ECA.</p> <p>5.9. The Applicant remedied its breach of section 65 (2) (c) and the Committee was satisfied with the analysis of the application and its compliance thereto.</p> <p>5.10. The renewals Committee recommended that Council approve the renewal of both service and spectrum licences.</p> <p><u>Comments and Inputs</u></p> <p>5.1. Council inquired as to how the 50% music split between classical music and Old Skool/RnB will be reflected into the actual licence.</p> <p>5.2. The Committee indicated that, following the decision by Council on the 50% music split, the decision was communicated to the Licensee who had no objection to the decision, and had already submitted a Communications Plan to its listenership. The 50% split will be reflected in the licence.</p> <p><b>The submission was approved by Council.</b></p>	
6.	<p><b>5G Project Annual Report for 2020/21 Financial Year</b></p> <p>The Chairperson of the Council Committee presented the item.</p> <p>The purpose of the submission was to request Council to note that the 5G Project Annual Report for 2020/21 financial year will be shared with the 5G Forum Steering Committee and published on the ICASA website.</p> <p>6.1. During the financial year 2020/21, the Authority conducted a stakeholder survey on the state of 5G Readiness in South Africa. A questionnaire was developed by the Authority's 5G Committee and circulated to the members of the 5G Forum.</p>	Cllr [REDACTED]



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	<p>6.2. On 31 March 2021, the 5G Annual Report was tabled at Council and duly noted. Council resolved that the 5G Committee would decide on the way forward on how to deal with the report at a Committee level.</p> <p>6.3. On 15 April 2021, the 5G Committee resolved that the report would be shared with the 5G Forum Steering Committee for further comments, and, after refinement, the report would be published on the ICASA website.</p> <p><b>The submission was noted by Council.</b></p>	
7.	<p><b>Revised timelines for submission of written representations with regard to the draft Regulations on Mobile Broadband Services Inquiry</b></p> <p>The Deputy Chairperson of the Council Committee presented the item.</p> <p>The purpose of the submission was to request that Council approve the revised timelines for written submissions on the Mobile Broadband Services Inquiry (MBI).</p> <p>7.1. The Authority published the draft Regulations on the Mobile Broadband Services Inquiry on 26 March 2021, in Government Gazette No 44337.</p> <p>7.2. On 14 April 2021, the Authority received a letter from Vodacom requesting an extension of the submission deadline from 12 May 2021 to 09 June 2021.</p> <p>7.3. Vodacom indicated that the extension would afford it sufficient time to submit a comprehensive written submission, given that its key personnel were engaged in the finalisation of the Financial Reports for the year ended 31 March 2021.</p> <p>7.4. The Mobile Broadband Council Committee met on 21 April 2021 and resolved to recommend that Vodacom's request be approved by Council.</p>	<p><b>Cllr</b>    </p>



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	<p><u>Comments and Inputs</u></p> <p>7.5. Council submitted that the period of extension proposed was long and might have an impact on the project plan, come the end of the performance period.</p> <p>7.6. Council proposed and resolved that the extension be amended from 12 May 2021- to 28 May 2021, for written submissions on the MBI.</p> <p><b>The submission was approved by Council with the proposed dates.</b></p>	
8.	<p><b>Request for Council approval of amendment of Final Sports Broadcasting Services Regulations Amendment, 2021 and Reasons Document for the publication in the Government Gazette</b></p> <p>The Chairperson of the Council Committee presented the item.</p> <p>The purpose of the submission was to request that Council approve an amendment of the final Sports Broadcasting Services Regulations Amendment, 2021 for publication in the Government Gazette.</p> <p>8.1. The Authority published the regulations on 31 March 2021. On 1 April 2021, the Authority’s internal legal team identified an error in the regulations which needed to be rectified.</p> <p>8.2. The proposed amendment is in clause 10 of the regulations. The error identified in clause 10 is with regard to the referencing, which got misaligned due to formatting of the document.</p> <p>8.3. The amendment does not impact the regulations and has no bearing on the substance of the regulations. The amendment is made to provide clarity on “contraventions” in order to ease the implementation of the clauses relating to contraventions.</p> <p>8.4. It was recommended that Council approve the said amendment for publication in the Government Gazette.</p> <p><b>The submission was approved.</b></p>	Cllr [REDACTED]





No.	Action Item	Person Responsible
9.	<p><b>Finance Expenditure Report for Quarter 4 Of 2020/2021 Financial Period</b></p> <p>The Chief Financial Officer presented the item:</p> <p>The purpose of the submission was for Council to note and approve the Finance Expenditure Report for Quarter 4 of the 2020-21 Financial Year.</p> <p>9.1. The Q4 Report detailed the spending of Divisions, Projects, Revenue, as well as the National Revenue Fund, over the quarter and year to date. There was a section that also related to compliance with National Treasury regulations.</p> <p>9.2. A total amount [REDACTED] Department of Communications and Digital Technologies (DCDT) and [REDACTED].</p> <p>9.3. A [REDACTED] National Treasury [REDACTED] DCDT during the quarter.</p> <p>9.4. A total amount [REDACTED] days [REDACTED].</p> <p>9.5. The Authority's [REDACTED] 000 received to date from the DCDT during the current Financial Year. [REDACTED]</p> <p><b>The submission was approved by Council.</b></p>	CEO/ CFO
10.	<b>10<sup>th</sup> CRASA Annual General Meeting</b>	CEO/CS

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No.	Action Item	Person Responsible
	<p>The Executive Corporate Services presented the item:</p> <p>The purpose of the submission was to request Council to note key issues from the various specialised CRASA Committees that will be tabled at the 10<sup>th</sup> CRASA Annual General Meeting (AGM) to be held on 29 April 2021.</p> <p>10.1. The Communications Regulators' Association of Southern Africa will host its 10<sup>th</sup> Annual General Meeting. Councillor [REDACTED] was tasked with leading the ICASA delegation, with the support from Councillors [REDACTED] and [REDACTED].</p> <p>10.2. A preparatory meeting was held on 19 April 2021 to review contributions and provide a status update on the work of the specialised CRASA Committees.</p> <p>10.3. The ICASA CRASA delegation developed a detailed position paper which include ICASA views on the various key items to be deliberated upon at the AGM.</p> <p>10.4. Amongst others, ICASA will further recommend to the AGM the following:</p> <ul style="list-style-type: none"> <li>a) To consider holding future AGMs in April due to the end of Financial Year deadlines at end of March;</li> <li>b) With the establishment of the proposed new Economic Regulatory Committee, that the work/activities of the CRASA Roaming Task Team (CRTT); and</li> <li>c) The Strategic Planning Task Team, current led by ICASA be established into a permanent specialised committee to monitor and track progress of the various CRASA activities.</li> </ul> <p><b>The submission was noted by Council.</b></p>	
11.	<p><b>Quarter 4 Performance Information Report and COVID – 19 Interventions Report 2021</b></p> <p>The SM: Strategy &amp; Programme Management presented the item.</p>	CEO/SPM

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No.	Action Item	Person Responsible
	<p>The purpose of the submission was to table the ICASA Quarter 4 Performance Information and COVID – 19 Quarter 4 Interventions Report to Council for consideration and approval.</p> <p>11.1. The Department of Planning Monitoring and Evaluation (DPME) Revised Framework for Strategic Plans and Annual Performance Plans of December 2019 requires a government institution to prepare a Quarterly Report 30 days after the end of each quarter of implementation.</p> <p>11.2. ICASA's Quarter 4 Performance Information Report marks the fourth Quarterly Report against targets set in the ICASA Annual Performance Plan 2020/2021. The report documented progress towards delivery of MTEF outcomes stated in the ICASA Strategic Plan 2025.</p> <p>11.3. The ICASA Quarter 4 Performance Report was supplemented by the ICASA COVID – 19 Interventions Quarter 4 Report as per the 15<sup>th</sup> May 2020 directive from the DPME.</p> <p>11.4. On the overall performance, the Authority planned 44 targets for the quarter, and achieved 37 of those targets, but 7 were not achieved. In terms of performance in percentages, there are six (6) programmes that have achieved 100% and three (3) that have not achieved. Engineering and Technology achieved 29%, the overall percentage for Quarter Four (4) was at 84%.</p> <p>11.5. The areas of non-achievement were Licencing, which resulted from the Court interdicting the auction of spectrum. The second was Policy Research and Analysis, on the draft Regulations on Subscription Television Broadcasting.</p> <p>11.6. The ICASA COVID – 19 Interventions Report will be produced as a supplement to the normal ICASA Performance Information Report every quarter until ICASA ceases to implement any COVID – 19 interventions, or until government directs all government institutions to cease implementing any COVID – 19 interventions.</p>	



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	<p>11.7. In terms of the COVID – 19 Report, there were no positive cases from staff that were recorded in Quarter Four (4). The rented laptops and provision of data ensured that there was business continuity.</p> <p><u>Comments and Inputs</u></p> <p>11.8. The Chief Audit Executive indicated that the Q4 performance was audited, and that Internal Audit was in agreement with the 84% that was reported, and further that a certificate to the Minister will be sent to the Corporate Secretary for execution.</p> <p>11.9. Council indicated that it would be useful to perform an independent third-party assessment of the interventions that were undertaken by the Authority to learn lessons from which ones worked, and which ones were problematic and the reasons thereof.</p> <p><b>The submission was approved by Council.</b></p>	
12.	<p><b>Progress Report on the review of Policies as of end of Q4 (2020/21)</b></p> <p>The Risk and Compliance Management Specialist presented the item.</p> <p>The purpose of the submission was to provide Council with a progress report on the review of policies for noting.</p> <p>12.1. The Authority has a total of fifty-three (53) policies. The number of policies that do not require review in line with the Policy and Procedure Review Framework is twenty-eight (28). The number of policies that are currently undergoing consultation or that are to be submitted to Legal/ Internal Audit for vetting is twelve (12).</p> <p>12.2. The number of policies which are to be submitted to EXCO/AREDC Six (6), and policies which are to be submitted to Council for approval are also six (6). One (1) policy is to be rescinded.</p>	CEO/ LRCCC

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No.	Action Item	Person Responsible
	<p>12.3. Since the LRCCC introduced monitoring of policy reviews, a great improvement in the review of policies has been noted.</p> <p>12.4. Twenty-five (25) policies have become due for review and are currently being reviewed by the relevant owners. Seventeen (17) policies were reviewed and approved during the 2020/21 Financial Year.</p> <p><u>Comments and Inputs</u></p> <p>Council requested a policy review with regards to the Travel Policy, in respect of aligning it to include COVID- 19 travel restrictions and requirements.</p> <p><b>The submission was noted by Council.</b></p>	
13.	<p><b>Risk and Compliance Management Reports for Quarter Three and Quarter Four</b></p> <p>The Risk and Compliance Management Specialist presented the item.</p> <p>The purpose of the submission was to present to Council the Risk and Compliance Management reports for Q3 &amp; Q4 for noting:</p> <p>13.1. The primary objective of the risk management function was to ensure that ICASA improves and sustains its performance by protecting the organisation from adverse outcomes and optimising on opportunities.</p> <p>13.2. In terms of the assessment during the quarter, there was only one change on the risk of potential delays in regulatory interventions. The risk was reassessed as high, because of the risk having being materialised due to the litigation by Telkom.</p> <p><b>The submission was noted by Council.</b></p>	CEO/ ELRCCC
14.	<p><b>High Risk Legislation Implementation Report</b></p> <p>The Risk and Compliance Management Specialist presented the item:</p>	CEO/ LRCCC



No.	Action Item	Person Responsible
	<p>The purpose of the submission was to present to the Council an update, on the implementation of the compliance management activities pertaining to the high-risk legislation identified in the Annual Risk and Compliance Plan 2020/2021, for noting.</p> <p>14.1. The Risk and Compliance Management Plan 2020-21 highlighted the high-risk compliance obligations from the Compliance Universe for the financial year, which would form the basis for the compliance management activities documented in the Risk and Compliance Management Plan as follows:</p> <p>14.1.1 Disaster Management Act;            14.1.2 Protection of Personal Information Act;            14.1.3 Public Finance Management Act; and            14.1.4 Independent Communications Authority of South Africa Act.</p> <p>14.2. The high-risk compliance obligations are spread over the Four Quarters of the Financial Year and are actioned through the following compliance management activities:</p> <p>14.1.1 Annual Compliance Plan;            14.1.2 Compliance Risk Assessment;            14.1.3 Obligations Register; and            14.1.4 Communications Plan.</p> <p>14.3. The Crisis Management Committee (the CMC) was tasked to spearhead the Authority's response to the pandemic. The CMC has successfully implemented the compliance requirements in the workplace to combat and mitigate the spread of COVID-19.</p> <p>14.4. The deadline for compliance with the Protection of Personal Information Act is 01 July 2021. The organisation is procuring the services of an expert service provider to implement the compliance readiness programme on a risk-based approach.</p> <p>14.5. A total of sixty- three (63) compliance requirements have been assessed during the 2020/21 Financial Year. Only two (2) requirements were found to be non-compliant. Discussions are</p>	



No.	Action Item	Person Responsible
	<p>under way to have measures in place to remedy the non-compliance.</p> <p>14.6. During the 2020/2021 Financial Year, the contract between the Authority and the service provider for the compliance management system lapsed, and the compliance management activities had to be actioned manually.</p> <p>14.7. The process to procure a new system for the current Financial Year has commenced, which should improve the capacity to conduct compliance assessments on legislation.</p> <p><u>Comments and Inputs</u></p> <p>14.8. Council requested that the Authority look into e-Disclosures, (Conflict of Interest Disclosures).</p> <p>14.9. Management indicated that it is busy with the Terms of Reference with regards to e-Disclosure, in order to assist the Authority to administer the Disclosures electronically. Management further stated that it was part of the approved procurement plan for the current Financial Year.</p> <p><b>The submission was noted by Council.</b></p>	
15.	<p><b>Stakeholder invitation- Audio Visual Public Hearings</b></p> <p>Council nominated Cllr [REDACTED] and Cllr [REDACTED] to attend represent ICASA at the upcoming Audio Visual Public Hearings.</p> <p><b>The resolution was noted by Council.</b></p>	Council
16	<p><b>General</b></p> <p>16.1. <u>Elections update to Parliament</u></p> <p>PPCC briefing scheduled for 6 May 2021: Cllr [REDACTED] and the Committee are preparing a presentation that will be circulated to Council for inputs.</p>	Chairperson

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No.	Action Item	Person Responsible
	<p>16.2. <u>Resolution- Establishment of A Special Committee to Consider Applications for Licensing of Digital Community Television Service and Radio Frequency Spectrum Licences</u></p> <p>Council resolved that Cllr [REDACTED] join the committee as Deputy Chair of the Committee (replacing former Cllr Matthews).</p> <p>16.3. <u>PPCC Oversight visit</u></p> <p>Secretariat will confirm the dates with Parliament and revert to Council with the update.</p> <p>16.4. <u>PPCC Briefing on APP / Budget 2021-22FY</u></p> <p>The briefing session is scheduled for 11 May 2021. The presentation has already been prepared and sent to DCDT, Secretariat will recirculate the presentation to Council.</p> <p>16.5. <u>PPCC Briefing on Spectrum Licensing Process</u></p> <p>The briefing session is scheduled for 02 June 2021. Secretariat will confirm with Parliament on what would be the expectations of the PPCC.</p>	
15	<p><b>Closure</b></p> <p>The Chairperson thanked all who were present at the meeting and closed it at 11:28 pm.</p>	<b>Chairperson</b>
16	<b>Date of next meeting: TBA</b>	<b>Secretariat</b>

[REDACTED]  
Chair person

30 / 07 / 2021