

Independent Communications Authority of South Africa

Mi	NUTES OF AN ORDINARY	MEETING OF COUNCIL
Date	16 April 2019	
Time:	09h30	
Venue:	Block C, Thabo Mbeki Bo	pardroom
Present		Acting Chairperson
		Member
By Invitation		CEO
by invitation		CFO
		CAE
		Corporate Secretary
		Secretariat Officer
Partial Attendees		Free time Level Bisk and CCC
		Executive: Legal, Risk and CCC SM: Litigation, Contracts and General
		Legal Support
		Specialist: Litigation and General Legal Support
		Manager: Service Broadcasting
		GM: PRA
1		Researcher
		GM: Licensing
Apologies		
		Member



	Action Item	Person Responsible
1.	Opening and apologies The Acting Chairperson opened the meeting at 09:40 and welcomed all present.	Acting Chairperson
	Apologies The following apology was noted: Cllr a was attending a Benchmark Study Visit in Ghana on the Sport Broadcasting Regulations.	
2.	Declaration of interest No conflict of interest was noted at the meeting.	Council
3.	 Ratification of Agenda The following items were added to the agenda. Proposed settlement in the CCMA matter between Amos Hlabioa and ICASA. Review of Arbitration Award in the CCMA matter between and ICASA. SCM Training for Councillors. Non-payment of the first tranche by the DoC. Invitation by American Towers Company. The agenda was approved with the additional amendments.	AII
4.	Adoption of previous minutes	Council



	Action Item	Person Responsible
4.1	Minutes of a meeting held on 26 February 2019	Council
	The following corrections were noted:	
	 On page 4, item 7, first bullet point-The CRASA EXCO meeting was held in Tanzania on 23 March 2019. 	
	 On page 4, Item 7, second bullet point, ICASA hosted the CRASA Electronic Communications Committee from 04 to 08 February 2019 at ICASA's head office. 	
	 Page 7, Item 11, bullet point 5, correct the verb "conduct" to "conducted" 	
	The minutes were approved with corrections.	
4.2	Minutes of a meeting held on 12 March 2019	All
	The following corrections were made:	
	 On page 2, Item 1, bullet point two-Cllr Kadi was in Addis Ababa attending the Women in Technology Conference. 	
	The minutes were approved with the corrections.	
5.	Inter/ Intra Operator Disputes (Standing Item)	CEO
	The CEO presented the item.	
	There are currently five (5) Inter-Operator Disputes with the Compliance & Consumer Affairs (CCA), which are still pending, two (2) of the matters are with the Complaints and Complaints Committee (CCC), and one (1) matter is with the Legal, Risk & CCC as outlined as follows:	



Action Item	Person Responsible
Switch Telecoms v Cell C, MTN and Vodacom	
Date of dispute:22 September 2016	
Nature of the Dispute	
Dispute filed by Switch Telecom on the failure by Cell C, MTN and Vodacom to agree on commercial terms to charge for costs of Toll-Free numbers, in terms of the Numbering Plan Regulations, 2016.	
Summary of progress	
 Numerous engagements which took place from 2016 to date, between ICASA, the complainant and the 3 licensees have not resulted in any firm commitment or resolution. 	
 A meeting between the parties which was scheduled for September 2018, had to be postponed due to the unavailability of the parties. 	
 In February 2019, the case was reviewed by the task team (ICASA) and a letter was sent to the complainant, Switch Telecoms, to enquire whether the complaint should still be investigated. Switch Telecoms replied that it was currently finalising agreements with MTN and Vodacom and that it will advise the Authority on any progress in the matter. 	
Next Steps	
The task team was communicating with Cell C regarding the lack of progress on the matter and potential measures to be taken against Cell C.	



Action Item	Person Responsible
 Progress regarding the negotiations between Switch Telecom, MTN and Vodacom will be monitored. 	
Age analysis: 2 years.	
Intercel Online Africa (Pty) Ltd (IOLA) vs Telkom SA Limited	
Date of dispute :07 May 2018	
Nature of the Dispute:	
Interconnection Agreement -Telkom's refusal to interconnect.	
Summary of Progress	
 A letter was sent to Telkom by the Authority on 25 June 2018, to obtain Telkom's' version about the dispute. 	
 A report referring the matter to the CCC was prepared and submitted to the CEO's office, however, the matter has not been to the CCC. 	
Next Steps:	
The CCA will follow up on CCC referral.	
Age Analysis: 206 Business Days.	
Village Operator (Pty) vs Telkom SA Limited	
Date of dispute:06 June 2018	
Nature of the Dispute: Interconnection Agreement.	



Action Item	Person Responsible
 Refusal by Telkom to interconnect on voice and data due to an alleged outstanding debt of R1 226 838.32 by another company with the same 100% shareholder as Village Operator (VO). 	
Summary of progress	
 A letter was sent to VO on 25 June 2018, to clarify certain issues regarding the complaint and confirmation of the fact that there is an alleged 100% shareholder who owes Telkom money. 	
 In its response, VO alleged that it has transferred a substantial number of shares to other parties and as a result, Telkom invited VO to re-apply for interconnection if the shareholding had indeed changed. 	
 A follow-up letter was sent to Telkom on 03 August 2018, and no response was received. 	
Next Steps	
The task team was to discuss whether the complaint should be closed as VO has to date, not responded on the status of its application to Telkom.	
Age analysis:155 business days.	
Cell C vs Intercell Online Africa (Pty) Ltd (IOLA)	
Date of dispute:14 August 2018	
Nature of dispute: manipulation of calling line identification (CLI) by IOLA.	
Summary of progress	:



Action Item	Person Responsible
 Cell C alleges contravention of the Numbering Plan regulations, 2016 by IOLA. 	
 The matter was to be referred to the CCC in September 2018, however it has not reached the CCC. 	
Next steps	
To review the merit of referring the matter to the CCC.	
Age analysis:156 days.	
Liquid Telecom vs JASCO (Pty) Ltd	
Date of dispute:02 February 2019	
Nature of dispute: Facilities leasing Agreement.	
 JASCO was charging high cost for facilities on behalf of body corporates. 	
 On 07 February 2019, Liquid Telecoms was requested to provide the Authority with the full names of JASCO to establish if JASCO was a licensee. 	
Next Steps:	
The task team to check with Liquid Telecoms if it still interested to pursue the matter.	
Age analysis:43 days.	
Matters at the CCC	
Vodacom (Pty) Ltd v Telkom SOC SA Limited:	
Case number 237/2017	
On 13 February 2019, the CCC ruled that	



	Action Item	Person Responsible
	Telkom file a replying affidavit on or before 27 February 2019, and to deliver seven copies of the affidavit to the CCC Coordinator by 28 February 2019.	
ğ	Telkom withdrew the complaint and the matter is closed.	
	Vodacom (Pty) Ltd v Telkom SOC SA Limited:	
	Case Number 237/2017	
	On 11 April 2018, the CCC came to the following ruling:	
	 Granted the parties 15 working days in which to negotiate a procedure to address Telkom 's ability to negotiate or agree to time frames; and 	
	 Afforded the parties an opportunity to approach the CCC after the 15 working days if the matter remained unresolved. 	
	Litigation:	
	 Telkom has instituted a review application against the CCC's judgement /directive attempting to resolve the facilities leasing dispute between the parties. 	
	 Vodacom also lodged a counter application against the review application by Telkom. 	
	Council noted the report but highlighted that:	
	 The standard of the report must be improved and the necessary details for each matter updated, for ease of understanding by Council; and 	
	CCA should confirm whether indeed as per	



	Action Item	Person Responsible
	the regulations, toll-free calls are free to the end-user when dialled over mobile phones.	
	The report should be updated quarterly.	
6.	International Calendar of events	Executive:CS
	There was a separate list of events for other affiliations / associations i.e. IIC, Smart Africa etc. that is outstanding.	
	The list must be expedited and tabled at Council.	
7.	CRASA/SADC (Standing item)	Clir
	Cllr presented the item:	
	 As ICASA is no longer Chairing CRASA the standing item can be removed. 	
	The AGM report as well as report of meeting of the last EXCO will be tabled to Council during May 2019.	
8.	Licensing of IMT (Standing item)	Clir
	Cllr presented the item:	
	The Council Committee on Spectrum Resources was monitoring developments on the matter and awaits publication of the Policy Direction from the Minister by end of April.	
9.	Public Audit Amendment Act (Standing item)	Executive: Legal Risk and
	As per matters arising document, the Act is in force and the Regulations were promulgated.	CCC
	LRCCC was preparing a brief for Council as to the implications of the of the Act, and Regulations including measures to be put in place to mitigate the risks.	



	Action Item	Person Responsible
10.	Newcastle Community Members (NCM) VS Newcastle Community Radio (NCR)	Clir
	The purpose of the submission was to table the recommendation of the CCC in the matter between NCM and NCR.	
	Cllr presented the item:	
	 On 12 September 2018, the NCM lodged a complaint that Mr. Bheki Nondala, Mr. Luka Sithole Nzima Zodi, Mr. Nhlanhla Mtshali and Andile Masondo (the parties) contravened the Standard Terms and Conditions of a licence as amended in 2016, and regulation 10A read with regulation 4 which states that a licensee must use profit and other income for the promotion of its broadcasting activities and in the service of its community; 	
	 It was alleged that the parties used the station's revenue for their own personal interests and not for the promotion of its broadcasting activities; 	
	 It was further alleged that there was no proper Board of Directors governing the Radio Station, and that there were three (3) factions within the governing structure of the station; 	
	 The Board of Directors were requested by the Authority to file the Audited Financial Statements for 2014/2015, 2015/2016,2016/2017 and 2017/2018 financial periods; and 	
	The station manager's signed contract of employment, detailing his full name and date of appointment, and a detailed	



Action Item	Person Responsible
programming of the station, time slots and the name of presenters and their signed contracts with the radio station.	
Recommendation to Council	
The CCC indicated that there was a problem in identifying the Chairperson of the Board.	
 The July 2018 meeting at which Mr. Zondi was elected as Chairperson of the Board was to be regarded as the most recent expression of the will of the Community represented at the meeting. 	
The CCC recommends that Council make an order as follows:	
 A full report must be filed with ICASA by the Station Manager (also signed by the Chairperson of the Board) as to the state of the broadcasting by the respondent at the end of June 2019. 	
 A detailed report must be included as to the programmes provided in March, April and May, with dates and times of the broadcasts. 	
 Similar reports to be filed by 30 October 2019 and 31 January 2020. 	
 At the end of August 2019, a report must be filed by the Chairperson and the station manager concerning the bank account or accounts of the radio station, including the identity of the person(s) mandated to transact on the accounts, and bank statements for May, June and July 2019. 	
The Station Manager must by the end of	



	Action Item	Person Responsible
	November 2019, file a report with ICASA on how the community was consulted from June to end November 2019 as to broadcast content and what the result thereof was.	
	 The Chairperson of the Board must call an Annual General Meeting before the end of November 2019. 	
	The meeting must be held at a readily accessible location, approved by the Board. The minutes of that meeting must be filed with ICASA before 16 December 2019.	
	 The Annual Financial Statement of the Radio Station, as approved at the Annual General Meeting 2019, must be filed with ICASA before 16 December 2019. 	
	The recommendation by the CCC was approved.	
	Council requested that a partnership be explored with IoDSA to support community broadcasters (as part of the NPO initiative). MDDA can also be roped in.	
11.	Response to MTN's written submissions in Respect of Section 17H of the ICASA Act.	CEO
	The purpose of the submission was to request Council to consider MTN's written representation to the Authority.	
	The Executive: Legal, Risk and CCC presented the item:	
	 On 3 May 2018, Council issued an order to MTN to port the identified numbers to Vodacom within seven days from the date of the order. 	



Action Item	Person Responsible
 On 1 June 2018, the Authority received a review application from MTN in terms of which MTN sought an order to review and set aside ICASA's decision. 	
 ICASA opposed the review application and directed MTN to comply with its order or alternatively MTN to provide representations as to why ICASA should not invoke the penalties provided for in terms of section 17H of the ICASA Act, regarding its failure to comply with the timelines indicated in ICA'A's order. 	
 MTN filed a written representation outlining why ICASA should not invoke the penalties provided for in terms of section 17H of the ICASA Act. 	
 For MTN to prevent the Authority from invoking the above sections, MTN will have to obtain an interdict to allow it to maintain the status quo. In the absence of such an interdict, the order of the Authority remained lawful, enforceable and must be adhered to. 	
 The LRCCC recommended that Council approves that the Authority invokes the provisions of section 17H (1) (f) regarding MTN's failure to comply with the timelines indicated in ICASA's order of 3 May 2018(i.e. lay a criminal charge against MTN). 	
It was resolved that the recommendation not be approved for the following reasons:	
✓ Council expressed concern that the matter appeared to be subject to	



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	Action Item	Person Responsible
	agreement between the parties and the question was what the effect of would be opening a criminal case against MTN.	
	✓ Council resolved that a letter be sent to all parties requesting that each of them provide a status update in respect of the matter.	
	✓ Council will upon consideration of the responses reconsider the matter.	
12.	ICASA response to Wave Broadcasting and Entertainment (Pty) Ltd (MC90.3 FM Plett and Knysna 97.0 FM)	CEO
	The purpose of the submission was to request Council to approve the response to Wave Broadcasting and Entertainment (Pty) Ltd submission.	·
	The GM: PRA presented the item:	
	 Wave Broadcasting wrote to the Authority on 08 January 2019, raising concerns regarding the outdated regulations on Lower Power Sound Broadcasting and the rejection by the Authority to extend its broadcasting coverage. 	
	 The draft response to Wave indicated that every amendment to a license was considered on its merits and in terms of the relevant legislation and regulations. 	
	 The Authority published the final report on the review of Broadcasting Regulatory Framework towards a Digitally Converged Environment in South Africa. 	
	The report indicated that Low Power Sound broadcasting regulations will be reviewed in	



	Action Item	Person Responsible
	2020 and beyond.	
	 Wave was informed that the reason behind licensing two similar Community Sound Broadcasters in the same area that serve the same coloured Community namely (Eden FM and Couga FM) and have an overlapping signal distribution into Plattenberg Bay and Knysna. 	
	 Further that Eden FM was licensed to provide a community broadcasting service in the Eden District Municipality in the Western Cape Province and Kouga FM was licensed to provide a community broadcasting service in Kouga Municipality which falls under Sarah Baartman District Municipality in the Eastern Cape Province. 	
	 Low Power Sound broadcasting regulation will be reviewed separately from Community Broadcasting regulation to ensure that the sets of regulations were not confused and that both receive the required attention. 	
	The response by the Authority to Wave Broadcasting and Entertainment (Pty) Ltd was approved. The GM: Licensing, Manager: Service Broadcasting and SM: Spectrum Licensing joined the meeting at 12:24	
12.	Lifting of the Moratorium on Community Sound Broadcasting Licence Applications	CEO
	The purpose of the submission was to recommend that Council lift the moratorium in respect of applications for both Class Community Sound Broadcasting Service Licences and Radio Frequency Spectrum Licences for purposes of providing community sound broadcasting services.	



Action Item	Person Responsible
The GM: Licensing presented the item:	
On 22 September 2015, the Authority issued a moratorium in respect of applications for both class community sound broadcasting services licences and Radio Frequency Spectrum licenses for purposes of providing a community sound broadcasting service.	
In the notice the Authority indicated that the moratorium was necessitated by:	
✓ A scarcity of analogue radio frequencies;	
✓ The Authority was reviewing the Licensing Processes and Procedures Regulations wherein it intends to process registrations for class community broadcasting licences in two intervals per year; and	
✓ The Authority intends developing a new regulatory framework for community broadcasting during 2016/2017 financial year.	
 The Authority finalised its review of the Licensing Processes and Procedures Regulations to include a provision for the Authority to process registrations for class community broadcasting licences in two intervals per year. 	
 On 22 March 2019, the Authority published a framework for community broadcasting in the form of Community Broadcasting Service Regulations. 	
The following new requirements brought about by the 2019 Community Broadcasting Services	



Action Item	Person Responsible
Regulations must be noted:	
✓ An applicant must be registered as a no profit entity two years prior to lodging an application for registration as a community broadcasting service licence;	
✓ The applicant must demonstrate community development and empowerment with respect to the community located within the coverage area it would like to render broadcasting services;	
✓ The Authority must first publish an invitation for prospective applicants to submit pre -registration notice.	
✓ Where the Authority was satisfied that the applicant met the requirements for the granting of a licence, the Authority will communicate such decision to the applicant for community broadcasting service licence within thirty days of the Authority's written communication.	
It must be noted that the lifting of the moratorium does not mean that applications for community broadcasting licences can be submitted immediately.	
It was recommended that Council approves the lifting of the moratorium in respect of applications for both class community sound broadcasting service licences and radio frequency spectrum licences.	
The recommendation was approved subject to:	



	Action Item	Person Responsible
	An audit be conducted to assess spectrum availability.	
	There was also a need for a clear implementation plan as to when applications can be received / processed by the Authority considering the new regulatory framework.	
	The decision to lift the moratorium must be published in the government gazette.	
	 There should be a media statement issued - at time of publication of the decision - as well as communication to key stakeholders (DTPS, DoC /Parliament/ MDDA etc.) 	
	✓ The above should be tabled within the next 30 days	
	There was one objection / dissenting view which will be made available upon request.	
13.	Submission of the report on Regional Project on Digital Transformation and Diversification of Postal Services in Africa	Clir
	The purpose of the submission was to table to Council the Report on Regional Project on Digital Transformation and Diversification of Postal Services in Africa.	
	Cllr presented the item:	
	The workshop took place in Cairo, Egypt from 18 to February 2019.	
	The objective of the workshop was to launch the UPU Regional Project on Digital Transformation and Diversification of Postal	



	Action Item	Person Responsible
	 Services in Africa. The regional project was formulated within the framework on the second goal of the Istanbul World Postal Strategy, which addressed the modernisation and diversification of postal services. The project will be implemented during the 2017-2020 cycle, with the aim of helping beneficiary countries develop strategies for digital transformation. The objective was to ensure participation in the digital economy and contribute to national socio -economic development and to the attainment of the UN Sustainable Development goals. It was noted that the was an oral presentation of the item at the previous meeting of Council. The report was noted. 	
14.	Proposed Migration /Placement Framework and Procedure. The purpose of the submission was to notify Council on the proposed Migration/Placement Framework and Procedures, for further consultation with internal stakeholders prior to implementation. The SM: Talent and Performance Management presented the item: On 27 November 2018, Council approved the new organisational structure and revised qualifications framework for ICASA. The new organisational structure aims to address	



Action Item	Person Responsible
the following: ✓ Absorb all excess employees; ✓ Correct (re-grade) grading for	
positions which were incorrectly graded; ✓ Implement consistent ranking structures across all divisions; ✓ Establish one pay scale; ✓ Implement an appropriate qualification framework; ✓ Establish consistent and reliable Job Evaluation System and capacity; and ✓ Ensure organisational structure mirror the current and optimal structure.	
 ICASA recognises that it will need to consider a migration /placement process that would facilitate the process of placing employees from the existing structure into a revised organisational structure. 	
 The migration /placement framework and procedure intend to detail the mechanisms that will be implemented in addressing these potential implications. 	
 It was acknowledged that as an employer, ICASA seeks to ensure that its legal obligations are met and that its employees are dealt with in a legally fair and transparent manner. 	
The following comments required consideration:	
 The interchangeable use of placement / migration must be corrected (consistency was required). 	



	Action Item	Person Responsible
	 Para 9: reconstitute Divisional Placement Panel and have 'independent' people i.e. executives and managers from other divisions / HR&REMCO members can be used. 	
	 Financial implications are not clearly outlined. 	
	 Five-year implementation timeline was long. 	
	Grievance Policy / Procedure must be reviewed.	
	The Framework was noted, and it was accepted that it be further consulted upon with internal stakeholders including HR&REMCO.	
15.	Disciplinary Matter-Manager Supply Chain Management	CEO
	The Executive: Human Resources presented the item:	



	Action Item	Person Responsible
	The following was resolved:	
	The update was noted.	
16.	Update on Employee Relations Matters The purpose of the submission was to provide Council with an update on the status of labour matters.	CEO
	The Executive presented the item:	
	 The Human Resources division had been handling various employee relations matters during the 2018/19 year through disciplinary hearings. In certain instances, some of these cases 	
	 have led to termination of employment or dismissals' The submission provides that a brief 	



	Action Item	Person Responsible
	progress made on individual cases as all other cases that have been referred to external institutions such as the Commission for Conciliation, Mediation and Arbitration (CCMA) and the Labour Court for review.	
	The update on Employee Relations Matters was noted.	8
	The following specific matters were also discussed:	
	✓ ————————————————————————————————————	
	Review of Arbitration Award in the CCMA Matter between and ICASA	
:	The Executive: Human Resources presented the item:	
	and	
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Action Item	Person Responsible
The submission to review the CCMA outcome	
was approved.	
The Executive: Human Resources presented the item:	
Real/ground and Discussion	
• Background and Discussion	



	Action Item	Person Responsible
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	The settlement proposal was noted.	
17.	The Draft Sport Broadcasting Services Amendment Regulations,2018 Public Hearings Schedule	Clir
	The purpose of the memo was to request Council to approve the Public hearings schedule for the Draft Sports Broadcasting Services Amendment Regulations.	
	Cllr essented the item:	
	The Public Hearings on Sports Broadcasting Regulations were scheduled to take place on 27	



	Action Item	Person Responsible
	to 31 May 2019, and will be held at the Park Inn, Hotel in Sandton. The schedule was noted.	
18.	General	All
	 As per the Council request, a legal opinion should be sought on the Disciplinary Policy and Procedure. 	
	 Supply Chain Training for Councillors was optional and Councillors who will not be able to attend may be substituted by relevant members of staff to ensure that ICASA does not lose out on the value. 	
19.	Closure	Secretariat
	The Acting Chairperson thanked all who attend the meeting and adjourned at 15:56	
20.	Date of next meeting: 22 April 2019	Secretariat

Signed:	Date: _	16	July	2019	
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(Chairperson)