



## Independent Communications Authority of South Africa

### MINUTES OF AN ORDINARY COUNCIL MEETING

Date	28 October 2021	
Time:	08:00	
Venue:	Microsoft Teams	
Present		Chairperson
		Councillor
		Councillor
		Councillor
		Councillor
		Councillor
		Councillor
		Councillor
By Invitation		CEO
		CFO
		CAE
		Corporate Secretary
		Secretariat Officer
		Secretariat Officer
Partial Attendees		Manager: Broadcasting Frequency Coordination
		Executive: Licensing and Compliance
		Acting Executive: LRCCC
		SM: Strategy and Programme Management
		Manager: Wholesale services: PRA
Apologies		



No.	Action Item	Person Responsible
1.	<b>Opening and apologies</b>  1.1. The Chairperson opened the meeting at 08:00 and welcomed all present.  1.2. There were no apologies noted.	<b>Chairperson</b>
2.	<b>Declaration of interest</b>  No conflict of interest was noted.	<b>Council</b>
3.	<b>Ratification of the Agenda</b>  The agenda was adopted with no amendments.	<b>All</b>
4.	<b>Minutes of Council Meeting held on 29 September 2021</b>  The minutes were adopted as presented.	<b>Council</b>
5.	<b>Matters Arising</b>  The Matters Arising document was deferred.	<b>CEO</b>
6.	<b>International Engagements (Standing Item)</b>  There was no update on International Engagements.	<b>CEO/CS</b>
7.	<b>Licensing of IMT (Standing Item)</b>  The Manager: Broadcasting Frequency Coordination presented the item.  7.1. The Committee conducted a virtual Workshop on the Information Memorandum on 15 October 2021. The purpose of the workshop was to reinforce the understanding of the published Information Memorandum Workshop. It was well attended, with a turnout of ± 120 participants.  7.2. Technical and competition issues relating to the published IM were presented and interrogated. The Committee noted key themes that emerged from deliberations by stakeholders. The legal and procedural issues relating to the interpretation of the Court Order were also interrogated.	<b>Cllr Z [REDACTED]</b>



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	<p>7.3. The Committee further noted the plea from various stakeholders to publish the draft ITA for consultation. Stakeholders suggested that this will minimise the risk of litigation.</p> <p>7.4. The amendment of the deadline for receipt of representations was communicated as being 02 November 2021. The Notice has been submitted for Council approval for publication.</p> <p>7.5. Stakeholders were requested to address pertinent issues discussed in the workshop in their written submissions, providing the Authority with alternative suggestions and recommendations.</p> <p>7.6. Stakeholders were therefore requested to address the publication of the draft ITA in their written submissions, providing policy/legislative/regulatory grounds in support of their proposals.</p> <p>7.7. The Authority undertook to avail slides and recordings of the workshop as soon as they are available.</p> <p>7.8. Project Progress:</p> <p>7.8.1 Publication of the Information Memorandum for Consultation, and Workshop on the Information Memorandum, have both been completed.</p> <p>7.8.2 The closing date for receiving public representations to the IM will now be on 02 November 2021.</p> <p>7.8.3 Publication of the 2<sup>nd</sup> IM for consultation will be on 15 November 2021.</p> <p>7.8.4 The closing date for comments on the 2<sup>nd</sup> IM will be on the 29 November 2021.</p> <p>7.8.5 Publication of the ITA, as amended, will be on 10 December 2021.</p> <p>7.8.6 The closing date for receiving new and revised applications to the ITA will be on 31 January 2022.</p>	



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	<p>7.8.7 Announcement of qualified bidders will be on 21 February 2022.</p> <p>7.8.8 The start of the auction process on the 01 March 2022.</p> <p>7.9. The upcoming events were noted by Council.</p> <p><b>The update was noted by Council.</b></p>	
8.	<p><b>Amendment application of Primedia (Pty) Ltd, Trading As 94.7 Highveld Stereo, for Individual Commercial Sound Broadcasting Service Licence</b></p> <p>The Acting Executive Licensing presented the item.</p> <p>8.1. The purpose of this submission was to recommend that Council approve the application submitted by Primedia (Pty) Ltd, trading as 94.7 Highveld Stereo, ("the Applicant") for the amendment of its Individual Commercial Sound Broadcasting Service ("I-CSBS") licence.</p> <p>8.2. The Applicant holds both a Radio Frequency Spectrum licence ("RFS") and an I-CSBS licence to provide commercial sound broadcasting services in Johannesburg in the Gauteng Province.</p> <p>8.3. On 20 April 2018, the Authority received the application from the Applicant to amend its I-CSBS licence.</p> <p>8.4. A resolution of authority authorising Ms Nomvuyiso Batyi to bring this application on behalf of the Applicant was duly submitted.</p> <p>8.5. The Applicant attached proof of payment of the application fee totalling an amount of R60 940. The amendment application was part of the renewal application lodged with the Authority and finalised in 2019. The amendment application was inadvertently not published in the Government Gazette, and processing thereof not finalised.</p> <p>8.6. The Applicant advised that due to structural changes within the company, it had failed to follow up with the Authority regarding the status of the amendment application, and confirmed that it</p>	CEO / Licensing



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	<p>still wished to proceed with a revised version of its original application. On 04 May 2021, the Applicant submitted supplementary information in respect of its application.</p> <p>8.7. On 10 June 2021, the Authority published a notice in the Government Gazette inviting interested parties to submit written representations in relation to the application, within twenty-one (21) working days from the date of publication of the notice. By the closing date of 8 July 2021, no written representations had been received by either the Authority or the Applicant.</p> <p>8.8. Having considered the amendment application before the Authority and the fact that no written representations were received, the Licensing and Compliance Division decided not to hold public hearings.</p> <p>8.9. The Applicant seeks to amend clause 5, Local Content Obligations, in its I-CSBS licence. The proposed amendment is aimed at ensuring that the Applicant's obligations relate to activities that are wholly within its control to ensure that it is able to fully comply with them.</p> <p>8.10. The Licensing and Compliance Division has considered the Applicant's views regarding the implications of the proposed amendments and submits as follows:</p> <p>8.10.1 There is no commercial sound broadcasting service licensee in the coverage area of the Applicant, which, if this proposed amendment is granted by the Authority, will cause potential prejudice or harm to other broadcasters in the coverage area.</p> <p>8.10.2 The Applicant's coverage area is limited to the Southern parts of Gauteng, in which there is no commercial radio station that broadcasts a similar format to that of the Applicant.</p> <p>8.10.3 The Applicant's licence terms and conditions require it to promote at least eight music concerts annually and allocate airtime for the broadcasting thereof. Although it</p>	



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	<p>has over the years endeavoured to comply with this clause in its entirety, this has proved difficult. Consequently, the Applicant has on several occasions been found to be non-compliant with clause 5 of its I-CSBS licence - in the main the second aspect requiring allocation of airtime for broadcasting.</p> <p>8.10.4 The Applicant has consistently raised the challenges it has faced in relation to obtaining recording rights from the record companies, which were unable to guarantee the sound quality to the required specifications. The record companies would only allow broadcast of music if the recording is up to their standards.</p> <p>8.10.5 As a broadcaster, and not a recording company, it was impossible for the Applicant to obtain the requisite intellectual property rights attached to the musical works.</p> <p>8.11. Having considered the Applicant's proposed amendments, the Licensing and Compliance Division is of the considered view that they are: (i) reasonable and justifiable; (ii) in keeping with the spirit and intention of the original clause - i.e., the promotion of local talent; and (iii) in line with the provisions of section 10 of the ECA.</p> <p><u>Recommendation to Council</u></p> <p>8.12. It was recommended that Council approves the Applicant's amendment of Clause 5 of its I-CSBS licence for the following reasons:</p> <p>8.12.1 The requested amendment maintains the spirit and intention of the original promise of performance - i.e. the promotion of South African music artists; and</p> <p>8.12.2 The application is in line with the provisions of section 10 of the ECA.</p> <p><u>The following comments were made:</u></p>	



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	<p>8.13. Council requested if there will be a commitment from the Station to inform local artists about the announcement platform on the Station.</p> <p>8.14. Council sought clarity on why the application was not finalised when it was initially submitted.</p> <p>8.15. Management informed Council that the spirit of the Clause was to promote South African music content. The reason for the amendment is that the licensee has been unable to meet the licence requirement, which is the main reason why the Authority was approached to amend the licence requirement.</p> <p>8.16. Management further relayed to Council that the Gig-Guide will not exclusively be online, and, further, that the licensee has committed to broadcasting the Gig-Guide on a slot on the Station during the performance period from Thursdays to Sundays. Management further stated that this requirement will be monitored, and that the licensee will be in a position to provide evidence in the form of recordings to this effect.</p> <p><b>The submission was approved by Council.</b></p>	
9.	<p><b>Approval of the amended Digital Television Content Advisory Group Council Committee Resolution</b></p> <p>The Chairperson of the Committee presented the item.</p> <p>9.1. The purpose of this submission was to Council to approve:</p> <p>9.1.1 the amended Digital Television Content Advisory Group ("DTCAG") Council Committee Resolution; and</p> <p>9.1.2 DTCAG Terms of Reference (TOR).</p> <p>9.2. On the 21<sup>st</sup> August 2018, a submission was made to Council requesting a continuation of the DTCAG, and recommending that Council delegates one or two councillors to continue with the work. The submission was approved.</p> <p>9.3. In terms of regulation 14 of the 2012 Digital Migration Regulations published on 14 December 2012 in Government Gazette No 36000 under Notice No 1070 ("Regulations"), the</p>	Cllr <span style="background-color: black; color: black;">[REDACTED]</span>





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	<p>DTCAG must consist of the Chairperson, nominated by the Council of ICASA, and two ICASA employees, and other members from the industry, as provided for in the Digital Migration Regulations.</p> <p>9.4. In its approval for the continuation of the DTCAG, Council also appointed a Deputy Chairperson for the Group. During the execution of its duties, the DTCAG realised the need to have additional internal technical support, and, to that end, the Chairperson of the DTCAG requested the support of Mr Philemon Molefe.</p> <p>9.5. Subsequent to that a legal opinion from Legal Risk and CCC Division was sought to provide clarity regarding the interpretation of regulation 14 of the Regulations.</p> <p>9.6. The Legal Opinion advised that the regulation 14(3)(b) of the Regulations is unambiguous regarding the composition of the DTCAG. The Legal Opinion stated that according to the regulation, the DTCAG shall comprise only two (2) officials from the Authority. Further, the Legal Opinion stated that, therefore, the Authority has no discretion to increase its membership to the DTCAG without amending the Regulations.</p> <p>9.7. The Legal Opinion saw the necessity for the amendment of the Regulations. The DTCAG hereby requests the amendment of the Council Resolution on the composition of the DTCAG pending the review of the Regulations, to be amended to include the Deputy Chairperson and any other support from the Authority that the Committee may require from time to time.</p> <p>9.8. The DTCAG has developed its TORs. The TORs outline, among others, the functions of the DTCAG, the composition of the DTCAG, meetings, funding, duties of the Chairperson and those of the DTCAG, secretarial duties and dissolution.</p> <p><u>Recommendation to Council:</u></p> <p>9.9. It was recommended that:</p> <p>9.9.1 Councillors sign the attached amended resolution.</p>	





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	<p>9.9.2 Council approves the TOR, for signature by the Chairperson of Council.</p> <p><u>The following comments were made:</u></p> <p>9.10. Council requested clarity regarding the funding of the Committee, and how it is handled, so as to serve as reference in the other Committees.</p> <p>9.11. The Committee informed Council that there have not been any expenditures so far in the Committee, as it was established to assist the broadcasters to assist in the migration. The reports that have served before Council have been developed by the Broadcasters.</p> <p>9.12. The Committee informed Council that its mandate is to ensure that there is production of the digital content in order to facilitate and stimulate the digital migration.</p> <p><b>The submission was approved by Council.</b></p>	
10.	<p><b>Recommendation by CCC to Council in the matter between Telkom SA SOC Ltd and Octotel (PTY) Ltd</b></p> <p>The Council representative for the Committee presented the item.</p> <p>10.1. The purpose of the submission was to table the recommendation of the CCC in the matter between Telkom and Octotel.</p> <p>10.2. On 3 June 2019, Telkom referred a complaint against Octotel for investigation by the CCC in terms of Section 17B(a) (ii) and (iii) of the Independent Communications Authority of South Africa ("ICASA") Act No 13 of 2000.</p> <p>10.3. Telkom alleged that Octotel unlawfully accessed and installed its optic fibre cabling into Telkom's ducts, manholes and related infrastructure at Dune Ridge, Kleinbron Park and Sandown Estates located in the Western Cape.</p> <p>10.4. Telkom further alleged that such an illegal installation by Octotel amounts to the contravention of Section 43 of the Electronic Communications Act 36 of 2005 ("ECA"), read with</p>	Cllr <span style="background-color: black; color: black;">[REDACTED]</span>



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	<p>Regulation 3 of the 2010 Electronic Communication Facilities Leasing Regulations, in that Octotel failed to adhere to the compulsory regulatory processes of making a request or entering into an appropriate facility leasing agreement with Telkom for gaining access to electronic communications facilities.</p> <p>10.5. On 4 April 2019, Octotel admitted to having accessed the existing infrastructure in Dune Ridge, from the Home-Owners Association ("HOA") who were authorised to grant access - but denied any contravention.</p> <p>10.6. Octotel placed reliance on the unanimous Supreme Court of Appeal decision in the matter "Dennegeur Estate Home Owners Association and Another v Telkom SA SOC Ltd and Another". Octotel argued that Telkom was not the owner or possessor of the infrastructure. Therefore, Telkom was not in a position to prevent Octotel from installing its cabling, and that Octotel was entitled to proceed with the installation.</p> <p>10.7. On 9 and 12 May 2019, Telkom conducted site inspections and confirmed that Octotel had installed fibre optic cables at Kleinbron Park and Sandown Estate.</p> <p>10.8. The CCC held a pre-hearing conference on 4 November 2019. Thereafter, the parties filed their witness statements and held a pre-trial meeting on 27 January 2021. The matter was set down for a four-day hearing before the CCC on 26, 28, 29 and 30 April 2021.</p> <p>10.9. At the hearings, witness testimony and evidence were led. Telkom called three witnesses: Mr Andre Luc Delit, Mr Stefan Geldenhuys and Mr Frank Hagen. Octotel called Mr Scott Cunningham.</p> <p><u>Telkom's witness testimony corroborated the following evidence that:</u></p> <p>10.10. The underground passive infrastructure was installed by developers of the three gated estates between 2004 and 2007, at the behest of Telkom and in accordance with the specifications approved by Telkom. Telkom adopted one of</p>	



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	<p>two approaches: "The Supply and Deliver Model" or "The Developer Installation Model".</p> <p>10.11. Octotel dug its own trenches in the Sandown Estate and its subcontractors had accessed the existing infrastructure in the last mile.</p> <p>10.12. A debate concerning the issue of ownership ensued in this matter. The CCC held that the question of ownership was not relevant in these proceedings, as section 43 of ECA does not expressly mention ownership.</p> <p><u>Recommendation to Council by the CCC</u></p> <p>10.13. The CCC recommends that the following order be issued by Council of ICASA to direct Octotel as follows:</p> <p>10.13.1 To desist from any further contravention of section 43 of the ECA, read with Regulation 3 of the Electronic Communications Facilities Leasing Regulations, in relation to any of Telkom's underground passive infrastructure within the affected estates;</p> <p>10.13.2 To desist, (where there is no agreement in place between it and Telkom), from continuing to install its optic fibre in Telkom's infrastructure within Kleinbron Park, Sandown Estates, and Dune Ridge in the Western Cape;</p> <p>10.13.3 To enter into negotiations with Telkom, and conclude a facilities leasing agreement in relation to underground passive infrastructure in the affected estate;</p> <p>10.13.4 In the event Octotel fails to comply with paragraph 10.13.3 above, to direct Octotel to vacate its optic fibre from Telkom's infrastructure within each of the above estates within 14 days after Octotel has refused to enter into negotiations for a lease agreement.</p>	



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	<p>10.13.5 To pay a fine in the amount prescribed by the Authority in respect of its failure to comply with section 43 of ECA, read with the Electronic Communications Facilities Leasing Regulations.</p> <p>10.14. Council was advised that the above recommendation forms the majority judgment of the CCC. Council was cognisant of a minority dissenting opinion by Mr Paris Mashile.</p> <p><u>The following comments were made</u></p> <p>10.15. Council cautioned that the judgment hinges on the ownership of the facilities in question, and further commented that this sentiment was reflected in the minority judgement.</p> <p>10.16. Council expressed the view that the recommendations of the judgement, as it stands, would raise other issues, and have far-reaching consequences, should they be approved in the current state.</p> <p>10.17. Council resolved that there should be engagements with the CCC office to check whether the ninety (90) days' time bar for the CCC to finalise its recommendations and submit same to Council, has been adhered to.</p> <p>10.18. Council further resolved that the previous judgment on facilities leasing should be referred to, and that there should be a legal opinion from Senior Counsel.</p>	
11.	<p><b>Approval of the publication of the Discussion Document on the Review of the 2014 Call Termination Regulations in the Government Gazette</b></p> <p>The Project Manager presented the item.</p> <p>11.1. The purpose of this submission was to recommend that Council approves the vetted Discussion Document for publication in the Government Gazette.</p> <p>11.2. On 28 May 2021 the Authority undertook a review of the pro-competitive conditions imposed on licensees, as required in</p>	Cllr [REDACTED]



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	<p>terms of section 67(8) of the Electronic Communications Act, 2005 (Act No 36 of 2005, the “ECA”) and Regulation 8 of the Call Termination Regulations, 2014 (as amended) (“the Regulations”)</p> <p>11.3. On 11 June 2021, the Authority held a virtual stakeholder workshop, to discuss questions of clarity on the previously published process and the associated questionnaire.</p> <p>11.4. The Authority received written submissions on questions of clarity from Vodacom, Cell C, MTN, Telkom and Switchtel before the closing date of 21 June 2021, as stipulated in the Notice.</p> <p>11.5. On 28 June 2021, the Authority published a briefing note to respond to stakeholders’ questions of clarity. The Authority subsequently received responses to the questionnaire from Vodacom, MTN, Cell C, Telkom, FirstNet, Switchtel and ECN before the submission deadline of 31 August 2021.</p> <p>11.6. After due consideration of the responses to the questionnaire and international best practice, the Committee’s preliminary views, as contained in the Discussion Document, are as follows:</p> <p>11.6.1 Market definition: The definitions of Mobile termination markets and Fixed termination markets in terms of Regulation 3 of the Regulations remain unchanged.</p> <p>11.6.2 Effectiveness of competition: Competition in Mobile termination markets and Fixed termination markets will be ineffective in the absence of regulation. Therefore, the four market failures as per Regulation 7(1) of the Regulations will manifest.</p> <p>11.6.3 Significant Market Power: Each individual Electronic Communications Network Service (I-ECNS) and individual Electronic Communications Service (I-ECS) licensee that offers wholesale voice call termination services in South Africa still has 100% share of the market in respect of voice calls terminating on its</p>	

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	<p>network, and has Significant Market Power ("SMP") as defined in section 67(5) of the ECA.</p> <p>11.6.4 Remedies: The pro-competitive conditions imposed on licensees in 2014 are still necessary in order to address the market failures in the wholesale voice termination markets, as previously identified in regulation 7(1) of the Regulations. Asymmetry should be granted to new entrants for a period of up to three years upon entry.</p> <p><u>Recommendation to Council</u></p> <p>11.7. The Committee recommends that Council approves the vetted Discussion Document for publication in the Government Gazette.</p> <p><u>The following comments were made:</u></p> <p>11.8. Council requested further clarification with regards to page 23, pertaining to the Authority's preliminary view.</p> <p>11.9. Council inquired what the basis was for the three-year asymmetry.</p> <p>11.10. The Committee informed Council that the three-year period for asymmetry was based on the work done by the EU. When a licensee enters the market, it is expected that the licensee will be efficient after a three-year period from joining the industry.</p> <p>11.11. The Committee expressed to Council that the three-year standard of asymmetry is a small component of the business of mobile or fixed line-operators. The Committee was of the view that the success or failure of a mobile network operator like Cell C can only in part be attributed to asymmetry. The Committee relayed to Council that there could be other issues that have led to the situation that Cell C is facing.</p> <p>11.12. The Committee informed Council that, taking into consideration how the market has been from 2014 until today, there have not been significant change in the market to warrant the Authority to change its position with respect to</p>	





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	<p>the market definition and the effectiveness of competition in the markets.</p> <p>11.13. The Committee further informed Council that the issues that have been raised by Councillors are flagged in the document and have been posed as questions to the stakeholders. The Committee expressed that, should Council be minded to approve the Discussion Document, it will be published for public consultation, and there will be a 45-day period for inputs and information that can assist the Authority to take its preliminary views to a final view, which final view may be different, depending on the information that has been received.</p> <p>11.14. The Committee informed Council that the above process will lead to a publication of a Findings Document, once all the inputs from stakeholders have been considered. Once the Findings Document has been published, then only would the Authority potentially move to the imposition of regulatory interventions, by potentially amending the Call Terminations Regulations as they currently stand.</p> <p><b>The submission was approved by Council.</b></p>	
12.	<p><b>ICASA Compliance to Treasury Regulation 8.2.3</b></p> <p>The Chief Financial Officer presented the item.</p> <p>12.1. The purpose of this submission was to update Council on measures that have been put in place to effect payments to suppliers within 30 days, as required by the PFMA and Treasury Regulations.</p> <p>12.2. The Authority received an audit finding relating to its compliance with the 30-day period in the payment of valid invoice from suppliers. The AREDC also raised a concern on the impact this would have on SMMEs, given that Government resolved to pay SMMEs within 15 days.</p> <p>12.3. The following were identified as challenges in achieving compliance with legislation:</p>	CEO/CFO





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	<p>12.3.1 There is a challenge of not having a central repository for invoices within ICASA. A central email has been created, which is staffed by the Account Payable Administrator, to mitigate the challenge.</p> <p>12.3.2 There is a challenge of the invoice tracker not being updated regularly. The invoice tracker has been upgraded to mitigate the issue. Further, there will be a meeting with the Accounts Payable and Supply Chain Management Team every second day to review the register and address any issues.</p> <p>12.3.3 There is a challenge that banking details for new suppliers are not confirmed at Purchase Order Stage. A new process has been created to mitigate this challenge, which will be that:</p> <p>12.3.3.1 Supply Chain Management will inform the Divisional Assistant once a new supplier is created on the system;</p> <p>12.3.3.2 The Divisional Assistant will ask the supplier for their banking details, as well as Directors' / Members' resolution;</p> <p>12.3.3.3 Banking details confirmation will be sent to the Payroll Officer for capturing of the banking details.</p> <p>12.3.4 The challenge of invoices under dispute will be mitigated by a separate register being compiled of invoices under dispute.</p> <p>12.3.5 There is a challenge of contracts for accommodation not being aligned to internal processes, which then always attracts interest. The Legal Division is assisting in rewording this condition in existing contracts as a mitigating factor.</p> <p><u>Recommendation to Council</u></p> <p>12.4. It was recommended that Council:</p>	

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	<p>12.5.1 notes the circulars issued and progress made; and</p> <p>12.5.2 receives the detailed invoice tracker from Q3 onwards.</p> <p><u>The following comments were made:</u></p> <p>12.5. Council commended the Division on the steps that are being implemented to attempt to resolve the standing challenge in an effort to get a clean audit.</p> <p><b>The submission was noted by Council.</b></p>	
13.	<p><b>Quarter 2: Budget versus Actual Expenditure</b></p> <p><b>The budget was incorporated in the Q2 Comprehensive Report.</b></p>	CEO/CFO
14.	<p><b>Revision of the ICASA Annual Performance Plan 2021/22 for re-tableting in Parliament in compliance with the DPME circular 2 of 2021</b></p> <p>The Senior Manager: Strategy &amp; Programme Management presented the item.</p> <p>14.1. The purpose of the submission was to table the revised ICASA Annual Performance Plan 2021/22 to Council for consideration and approval.</p> <p>14.2. Chapter 3 (section 3.3.4) and Chapter 4 (section 4.4.4) of the DPME Framework for Strategic Plans and Annual Performance Plans (2019) provide guidance on the conditions under which strategic plans and annual performance plans of government institutions may be revised and re-tableted in Parliament. First, if the service delivery environment of the government institution has changed drastically enough to warrant change in the government institution's long-term strategic direction. Second, if there has been a government policy change.</p> <p>14.3. On 19th August 2021, ICASA received DPME Circular 2 of 2021, directing all government institutions to revise and</p>	CEO



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	<p>prepare their Strategic Plans 2025 and Annual Performance Plans 2021/22 for re-tabling in Parliament.</p> <p>14.4. In order to comply with the Circular, the Strategy &amp; Programme Management Unit in the Office of the CEO initiated the process of revising ICASA's Strategic Plan 2025 and Annual Performance Plan 2021/22FY.</p> <p>14.5. A request was sent to all ICASA Programmes to review ICASA's service delivery and organisational performance environment and situation. Based on the review, Programmes were to make recommendations on areas of the ICASA Strategic Plan 2025 and Annual Performance Plan 2021/22FY that must be amended.</p> <p>14.6. The revisions to the Annual Performance Plan 2021/22FY which were proposed by Programmes, were deliberated upon at the management annual planning session, which took place from 1st to 2nd September 2021, and resolutions were taken. Programmes were directed to submit the changes that were resolved upon to the Strategy &amp; Programme Management Unit in the Office of the CEO for final analysis and consolidation. Based on the review of the ICASA's service delivery and organisational performance environment by management, no revisions were proposed to the Strategic Plan 2025.</p> <p>14.7. The revisions to the Annual Performance Plan 2021/22FY were tabled and deliberated upon at the Council meeting of 12<sup>th</sup> October 2021 for further comments and inputs.</p> <p><u>Recommendation to Council</u></p> <p>14.8. It was recommended that Council considers and approves the ICASA's revised Annual Performance Plan 2021/22 for re-tabling in Parliament.</p> <p><b>The submission was approved by Council.</b></p>	
15.	ICASA Draft 1 APP 2022/23FY	CEO



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	<p>The Senior Manager: Strategy &amp; Programme Management presented the item.</p> <p>15.1. The purpose of this submission was to table the ICASA Draft 1 APP 2022/23 to Council for consideration and approval, in order for it to be submitted to the DPME and DCDT for planning frameworks compliance assessment and policy alignment respectively.</p> <p>15.2. Chapter 5 of the Treasury Regulations is reinforced by the Revised Framework for Strategic Plans and Annual Performance Plans, December 2019, of the Department of Planning Monitoring and Evaluation, which requires every government entity to develop its Annual Performance Plan and Operational Performance Plan in the year preceding the year of implementation.</p> <p>15.3. The Revised Framework for Strategic Plans and Annual Performance Plans, December 2019, of the Department of Planning Monitoring and Evaluation, also requires a government entity to present the Annual Performance Plan in two drafts. The first draft must be submitted to the Executing Authority by the end of October, and the final draft must be submitted to the Executing Authority in time to allow the Minister to table it in Parliament before the end of March.</p> <p>15.4. The Strategy &amp; Programme Management Unit in the Office of the CEO kick-started ICASA's annual planning for the financial year 2022/23 on 5th August 2021, with a request to all ICASA Programmes to hold individual annual planning sessions to develop their project plans, annual performance plans and operational performance plans in preparation for a management annual planning session. The management annual planning session took place from 1<sup>st</sup> to 2<sup>nd</sup> September 2021.</p> <p>15.5. The 2022/23FY Project Plans and Annual Performance Plans 2022/23FY were further reviewed during an ordinary Council Meeting on 12<sup>th</sup> October 2021.</p> <p><u>Recommendation to Council</u></p>	



No.	Action Item	Person Responsible
	<p>15.6. It was recommended that Council consider and approve the ICASA Draft 1 APP2022/23 for submission to DPME and DCDT for planning framework prescripts compliance and policy alignment respectively.</p> <p><b>The submission was approved by Council.</b></p>	
16.	<p><b>Quarter 2 Performance Information Report and COVID-19 Report</b></p> <p>The Senior Manager: Strategy &amp; Programme Management presented the item.</p> <p>16.1. The purpose of this submission was to table ICASA's Quarter 2 Performance Information and COVID-19 Report to Council for approval.</p> <p>16.2. The Revised Framework for Strategic Plans and Annual Performance Plans, December 2019, of the Department of Planning Monitoring and Evaluation, requires a government institution to prepare a quarterly report 30 days after the end of each quarter's implementation.</p> <p>16.3. The quarterly report must provide a progress update on the implementation of an institution's Annual Performance Plan in the previous quarter, with reference to monitoring delivery against quarterly performance targets.</p> <p>16.4. On 15<sup>th</sup> March 2020, the President of South Africa declared a state of National Disaster in response to the worldwide COVID-19 pandemic. Following the declaration, all government institutions were directed to come up with interventions to mitigate the impact of COVID-19 on their internal and service delivery environments.</p> <p>16.5. On 15<sup>th</sup> May 2020, the Department of Planning Monitoring and Evaluation issued the 2021 Guidelines for National Quarterly Performance Reports, giving national government institutions direction on how to report on COVID-19 interventions on a quarterly basis.</p>	CEO

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	<p>16.6. Therefore, the ICASA Quarter 2 Performance Report is supplemented by the ICASA COVID–19 Interventions Quarter 2 Report, as per the 15<sup>th</sup> of May 2020 direction from the Department of Planning Monitoring and Evaluation.</p> <p>16.7. A total of forty-two (42) targets were set for the quarter under review, out of which the Authority achieved thirty-two (32), and did not achieve ten (10). The organisation achieved seventy-six percent (76%) of the targets it planned for the quarter under review.</p> <p>16.8. The Authority's performance trend is slightly up as compared to the previous quarter, at an improvement margin of eight (8) percentage points.</p> <p>16.9. The Authority's grant is received on quarterly basis from the Department of Communications and Digital Technologies (DCDT / Department). A total amount of R [REDACTED] relating to the normal grant was received cumulatively in the second quarter from the Department, which was in line with the annual drawdown schedule, which represented 100% of the full year allocation.</p> <p>16.10. A second tranche of R [REDACTED] was received in the first quarter as part of the ring-fenced funding towards the licensing project of high-demand spectrum and the wireless open access network (WOAN). These funds are deferred as liability until expenditure is incurred.</p> <p>16.11. 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> <p><u>Recommendation to Council</u></p> <p>16.12. It was recommended that Council approve the ICASA Quarter 2 Performance Information and COVID–19 Interventions Report.</p>	



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	<b>The submission was approved by Council.</b>	
17.	<p><b>Quarter 2 Comprehensive Quarterly Report</b></p> <p>The Senior Manager: Programme and Strategy Management presented the item.</p> <p>17.1. The purpose of this submission was to table the ICASA Quarter 2 Comprehensive Quarterly Report to Council for consideration and approval.</p> <p>17.2. On 2 March 2021, the Authority held a meeting with the DCDT Entity Oversight Branch via Microsoft Teams. The purpose of the meeting was to discuss the alignment of the Authority's APP 2021/22 with the DCDT's APP2021/22 and the Minister's performance agreement.</p> <p>17.3. One of the resolutions of the meeting was that the Authority must report to the DCDT in a more comprehensive fashion on a quarterly basis to allow the Minister to have a holistic picture of the performance of the Authority and its general state of health.</p> <p>17.4. The production of ICASA's comprehensive quarterly report will follow a similar format to the one that has been followed to produce the quarterly performance information report over the years. Data was collected from Programmes, and consolidation undertaken, using all the inputs received.</p> <p>17.5. The variables contained on the comprehensive report include: Governance, Human Resources, Finance, Risk Management, Fraud Management, Assurance Audit, AG Audit Findings, as well as the Predetermined Objectives, which are listed under Annexure A of the Report.</p> <p><u>Governance</u></p> <p>17.6. The Authority's state of governance has remained robust during the quarter under review. Council remains committed to the adoption and implementation of policies and practices that promote and enforce a culture of integrity and</p>	CEO





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	<p>compliance, and that meet a high level of transparency and disclosure.</p> <p>17.7. Council and members of the various governance committees discharged their duties in line with all relevant governance legislative prescripts and ethos. It should be noted that Council comprises eight (8) members, as opposed to a full complement of nine (9) as required by the ICASA Act, 2000 (Act No 13 of 2000) ("ICASA Act"). However, Council was not hampered in the execution of its functions.</p> <p><u>Predetermined objectives</u></p> <p>17.8. The Authority has achieved seventy-six percent (76%) of the targets it set for the quarter. A total of forty-two (42) targets were set, out of which the Authority achieved thirty-two (32) and did not achieve ten (10). The reasons for non-achievement of some of the targets include the licensing process that was litigated, and the interim order prohibiting the Authority from processing the applications and conducting the auction. The Authority's performance trend shows an eight (8) percentage points positive margin compared to quarter one performance, which stood at sixty-eight percent (68%).</p> <p><u>Human Resources</u></p> <p>17.9. The Human Resources (HR) Division continues to make progress towards its objectives. These objectives include: maintaining a vacancy rate below 7%, maintaining a healthy employee relationship, maintaining a balance between racial and gender representation, and developing employees.</p> <p><u>Financial Status</u></p> <p>17.10. Revenue collected for the quarter under review is R [REDACTED] against the quarter 1 figure of R [REDACTED]. Sixty-eight percent (68%) of the year-to-date organisational budget has been utilised to carry out the work of the Authority as at the end of the quarter under review. The debt-to-assets ratio sits at 0,7 which indicates a solvent position for the Authority. The procurement plan is tracked to ensure adherence to timeframes. Quarterly meetings are</p>	



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	<p>scheduled with user Programmes to ensure all outstanding terms of references are submitted and to provide users with an update on the procurement processes.</p> <p>17.11. The Authority's assets [REDACTED] at the end of the quarter. As at reporting date, the Authority reported a total amount of [REDACTED] in assets and a balance of [REDACTED]</p> <p>17.12. In terms of the Cashflow Statement, the Authority has enough cash to meet its obligations when they become due. Obligations relating to the rolled-over projects are funded using business units virements while the Authority awaits the approved retention of committed funds request.</p> <p>17.13. The Cashflow Statement as of 30 June 2021 was:</p> <p>17.14.1 Cash at Bank was [REDACTED]</p> <p>17.14.2 NRF short-term investment (30 days account) was R [REDACTED]</p> <p>17.14.3 Petty cash was [REDACTED]</p> <p><u>Procurement Performance</u></p> <p>17.14. An amount of R [REDACTED] as been budgeted for 72 projects. To date ten bids have been awarded to the value of R [REDACTED] Five bids have been cancelled due to the bids being non-responsive.</p> <p>17.15. As an improvement initiative, the procurement plan is tracked to ensure adherence to timeframes. Further, quarterly meetings are scheduled with user divisions to ensure all outstanding terms of reference are submitted, and to provide users with an update on the procurement processes.</p> <p><u>Unauthorised Fruitless and Wasteful Expenditure</u></p> <p>17.16. The irregular expenditure of the Authority stands at R [REDACTED] [REDACTED] are payments relating to irregular</p>	



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	<p>contracts carried over from prior years, and R [REDACTED] relates to irregular expenditure incurred up to the end of the second quarter. Fruitless and wasteful expenditure is R [REDACTED]</p> <p><u>Risk Management</u></p> <p>17.17. The Authority's risk strategy held sway during the quarter under review, despite a few output risks materialising. The respective Programmes have formulated mitigation measures in respect of all identified risks, and these measures are being implemented.</p> <p><u>Fraud Management</u></p> <p>17.18. One alleged incident of corruption was reported during the quarter, through the Authority's anonymous fraud line. The incident did not merit referral to the Chairperson of Audit, Risk and Ethics Disclosure Committee (AREDC).</p> <p><u>Internal Audit</u></p> <p>17.19. Internal Audit performed assurance and consulting activities in line with the approved risk-based Annual Audit Plan. The assurance reviews completed during Q2 are: revenue management; leave management; supply chain management; bid and RFQ testing reactive assurance and cyclical review of performance information end to end audit of pre-determined objectives.</p> <p>17.20. Three assurance reviews are at the finalisation stage due to client readiness challenges and pending engagements. Those are: the quarterly financial statements quality assurance review; annual disclosures and gift register review; and IT backup and disaster recovery management.</p> <p>17.21. The consulting review included one ad hoc compliance review on the waiving of the performance contract process. In addition, consultation on the Council-led project on Equipment Authorisations Regulations (EAR) is at reporting stage. Engagement with management on previously reported control weaknesses is an ongoing process to raise awareness and seek progress towards resolution thereof.</p>	

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	<p><u>Auditor General Findings</u></p> <p>17.22. The Authority retained an unqualified audit opinion for the FY 2020/21. The Auditor General highlighted that the Annual Performance Report submitted by management had no material misstatements identified, based on work performed on programme 4 for usefulness and reliability. Further, the Auditor General highlighted that the Authority submitted annual financial statements which did not require material adjustments – which is an improvement from the prior year. The Authority has developed an AG ex-post audit plan, in which the findings reflected are monitored and reported at EXCO on a monthly basis, and to the Audit Risk Disclosure and Ethics Committee and Council on a quarterly basis.</p> <p><u>Litigation against the Authority</u></p> <p>17.23. The Authority was served with a number of litigation matters. Amongst these was a consent order review application relating to the licensing of IMT spectrum and the wireless open access network operator.</p> <p><u>The following comments were made:</u></p> <p>17.24. Council sought clarity on the steps to be taken to correct the irregular expenditure.</p> <p>17.25. Council requested a detailed explanation about the 33% performance of the Licensing and Compliance Division, and what led to the low performance.</p> <p>17.26. Council inquired about the under-expenditure on training. Council held that training is important for growing the capabilities of staff.</p> <p>17.27. Council requested that the leave report be corrected to reflect the quarter two figures.</p> <p>17.28. Management informed Council that there will be a process where condonation is prepared for the consideration of AREDC and Council, regarding irregular expenditure. The biggest ticket item is the current accommodation. Internal Audit will conduct an investigation, which will be taken through</p>	



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	<p>the Loss Control Committee, and the condonation will be processed through Council, and will then be submitted to National Treasury.</p> <p>17.29. Management informed Council that there are eight non-achievements in the Licensing Division. Two of the non-achievements pertain to the interdict. The other non-achievement relates to the Municipal Elections, and the delay regarding the proclamation of the Elections date. There is another non-achievement relating to the licensing of Community TV stations, where applications were received, but they all did not meet the requirements, and this resulted in a non-achievement. The non-achievements were due to external factors that the Authority could not mitigate against. The annual target will be achieved for some of these projects and an outline will be included in the report to clarify the reasons for non-achievement of the programmes in the Licensing Division.</p> <p>17.30. Management informed Council that a monthly report will be presented to Council going forward, pertaining to the IMT funding.</p> <p><b>The submission was approved by Council.</b></p>	
18.	<p><b>Internal Audit Submission – Review of the Quarter 2 Performance Information Report</b></p> <p>The CAE presented the item.</p> <p>18.1. The purpose of this submission was to apprise the Council of the audit results emanating from the reviewed Quarter 2 Performance Information Report.</p> <p>18.2. The reports are submitted in line with Treasury Regulations 3.2.7 (d), which provide that “to allow effective monitoring, a quarterly report will be submitted to the AREDC detailing Internal Audit’s performance against the annual Internal Audit plan”.</p> <p>18.3. A review of the Q2 PI was concluded on the 18<sup>th</sup> of October 2021. The objective was to enhance the quality of the reported</p>	CEO/CAE



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	<p>performance information, and further to validate that the achievement level was supported by accurate evidence.</p> <p>18.4. The review also aimed to identify areas that may cause potential misstatements and afford management an opportunity to correct the same timeously.</p> <p>18.5. Forty-Two (42) targets were planned, with a reported achievement of 32 / 42, constituting 76.19%.</p> <p>18.6. The number of reported findings greatly reduced, with concurrence on the achievement level (76%).</p> <p>18.7. The detective controls were effective, and previously-reported findings were averted.</p> <p>18.8. Inadequate reasons furnished for noted variances, corrections were subsequently effected by management through ongoing engagement.</p> <p><b>The review was noted by Council.</b></p>	
19.	<p><b>General</b></p> <p><u>SCM training for Councillors</u></p> <p>19.1. Council requested an explanation on why Council was requested to attend compulsory SCM training.</p> <p>19.2. Council requested that Management re-arrange the training structure to accommodate other standing engagements.</p> <p>19.3. Management informed Council that it explore further if the training can be structured in a different manner.</p> <p>19.4. Management further informed Council that it would help that Council have an overview of the applicable requirements and prescripts in the procurement environment, and that the training was to be in line with the Public Protector's report that recommended that Councillors have SCM training.</p>	All

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	19.5. Council resolved that Management should ensure that the training will be a tailor-made programme for Council regarding SCM, and not an in-depth training.	
20.	Date of next meeting: TBA	Secretariat
21.	Closure The Chairperson thanked all who were present at the meeting and adjourned the meeting at 11:49 am.	Council

Signed: 

Date: 26 / 04 / 2022

(Chairperson)