



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue,
Eco-Point Office Park
Centurion

COUNCIL DECISIONS– 01 June 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Application for the amendment of SABC's existing Radio Frequency Spectrum licences</p> <p>The purpose of the submission was to recommend that Council approve the South African Broadcasting Corporation's (SABC's) application for the amendment of some of its Radio Frequency Spectrum (RFS) Licences.</p> <p>1.1 On 14 August 2020, the Authority received an application from the SABC for the amendment the RFS Licences of SAFM; RSG; Metro FM; Ukhozi FM; Lesedi FM; Phalaphala FM; Thobela FM; Munghana Lonene FM; Umhlobo Wenene and Ligwalagwala FM</p> <p>1.2 The amendment application of these RFS Licences emanates from the consultation process that aimed at updating the table of the VHF/FM records contained in the Terrestrial Broadcasting Frequency Plan, 2013.</p> <p>1.3 Sentech (Pty) Ltd (the Signal Distributor) submitted its representation, wherein it provided several transmitter sites of the</p>	<p>The fact that the Authority is now aware that the SABC has been using the frequencies without a licence, and this is now being regularised, does not change that for a long period until the regularisation, the SABC committed an offence by using the frequencies without being licensed.</p> <p>The referral to the CCC, is about the period prior to being licensed, during which the SABC used the frequency before being licensed.</p> <p>The recommendation was approved.</p>

	<p>SABC that the Authority did not have records of.</p> <p>1.4 The Authority had engagements with the Signal Distributor and the SABC to collate the records of the sites they deemed licensed. However, neither the SABC nor Sentech could provide the Authority with copies of the RFS licences incorporating these frequencies as per Sentech and the SABC's records.</p> <p>1.5 It was resolved that the Authority should regularise the sites, and that the SABC should apply for amendment of the RFS licences.</p> <p>1.6 The Authority engaged the SABC to submit an amendment application to ratify or amend its RFS licences. Sentech has confirmed active frequencies that the SABC is currently broadcasting on, and the FM database has been updated accordingly.</p> <p>Recommendation to Council</p> <p>It was recommended that Council approve the application for ratification or amendment of the SABC's existing frequencies based on the following reasons:</p> <p>1.7 The request is in the interest of orderly radio frequency spectrum management.</p> <p>1.8 To align the Authority's Database with the Applicant's and the Signal Distributor's databases.</p> <p>1.9 The frequencies are active and are not causing harmful interference to existing Licensees.</p>	
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<p>2.</p>	<p>Request to approve the Reasons Document for the transfer of an Individual Electronic Communications Service and an Individual Electronic Communications Network Service licence from Pro Dynamic Data Consulting CC to Mubvumela Corporation (Pty) Ltd t/a MBV IT</p> <p>The purpose of the submission was to recommend that Council approve the vetted Reasons Document for the decision to approve the transfer of one I-ECS licence and one I-ECNS licence from Pro Dynamic Data Consulting Close Corporations (the Applicant) to Mubvumela Corporation (Pty) Ltd t/a MBV IT (the Transferee).</p> <p>2.1. On 02 July 2019, the Authority received applications for the transfer of I-ECS and I-ECNS licences from the Applicant to the Transferee.</p> <p>2.2. On 23 September 2020, the Authority approved the Applicant's transfer applications from the Applicant to the Transferee.</p> <p>2.3. The Licensing Division could not submit the Reasons Document for Executive Committee / Operations Committee(EXCO/OPCO) consideration together with the Applicant's transfer applications analysis, as it was still in the process of finalising the Reasons Document for vetting by Legal, Risk and CCC (LRCCC) Division.</p> <p>Recommendation to Council</p> <p>It was recommended that Council approve the Reasons Document for publication in Government Gazette.</p>	<p>The recommendation was approved.</p>
<p>3.</p>	<p>Analysis of South African Post Office (SAPO) draft Operating Procedure Manual for the financial year ending 31 March 2021</p>	<p>The recommendation was approved.</p>

	<p>The purpose of the submission was to make a recommendation to Council to approve the evaluation of SAPO's draft Operator's Procedure Manual (OPM) for the Financial Year ending 31 March 2021.</p> <p>3.1. The Authority, in terms of Section 8 and Section 30 of the Postal Services Act No 124 of 1998 (the Act), approved the Accounting Separation Regulations for Reserved Postal Services (the Accounting Separation Regulations) for publication and implementation on 10 March 2011.</p> <p>3.2. SAPO submitted its draft OPM to the Authority, providing clarity and details about its business and the functions of each operating division:</p> <p>3.2.1 The transfer of South African Postbank from a business unit to a subsidiary; and</p> <p>3.2.2 The mail business unit and the retail business unit have been consolidated at Regional Level.</p> <p>Key Findings of SAPO 2020/21 OPM Evaluation</p> <p>3.3 The SAPO was compliant with the submission deadline.</p> <p>3.4 The OPM details the source from which information is gathered, in order to collate the different reports of the RFS.</p> <p>3.5 SAPO explains, under each report, the source of the information, how it is collated, inclusions and exclusions of specific information used in its reports.</p>	
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	<p>3.6 SAPO provided detailed information about the methods, values and source of the variables used in the calculation of its Weighted Average Cost of Capital (WACC).</p>	
<p>4.</p>	<p>Recommendation by CCC to Council in the matter between iPROP (PTY) Ltd and Telkom SA SOC Ltd</p> <p>The purpose of the submission was to table the recommendation of the CCC to Council, in the matter between iProp and Telkom.</p> <p>4.1. On 26 April 2019, iProp referred a dispute against Telkom alleging that the dispute falls within the ambit of section 25(4) of the Electronic Communications Act 36 of 2005 (ECA).</p> <p>4.2. iProp alleged that the ECN facility constructed by Telkom entered iProp's private property without the requisite consent to do so, thereby restricting the development of the property.</p> <p>4.3. Furthermore, iProp argued that Telkom should have considered the relocation costs in terms of section 25(7) of the ECA.</p> <p>4.4. The CCC interpreted the word "may" in section 25(7) of the ECA, and held that it accorded a discretion on Telkom to determine whether to pay or not pay the relocation costs.</p> <p>4.5. On 22 October 2019, the Council of ICASA approved the recommendation of the CCC in accordance with section 17E of the ICASA Act, and the judgment was</p>	<p>The recommendation was approved.</p>

	<p>published to the parties on 7 November 2019.</p> <p>4.6. On 11 August 2020, iProp referred a second complaint against Telkom based in the similar facts as contained in the initial complaint.</p> <p>4.7. The issue in the second complaint was whether Telkom should be liable, in full or part, for the relocation of the ECN facility. This is the same issue that was placed before the CCC under the first complaint.</p> <p>4.8. iProp alleged that Telkom failed to exercise its discretion properly regarding the relocation costs for the ECN facility in terms of s25(7) of the ECA. iProp claimed that the amount Telkom quoted as relocation costs for the ECN facility was unreasonable.</p> <p>4.9. Telkom raised two points <i>in limine</i>, namely <i>res judicata</i> and <i>locus standi</i>. Telkom argued that the CCC made a final decision regarding the same issues and relief sought in the first complaint and that iProp could not re-litigate the same matter before the CCC. Telkom contended that iProp should rather take the decision on review.</p> <p>Recommendation to Council</p> <p>4.10 The CCC held that Telkom's plea of <i>res judicata</i> is upheld.</p> <p>4.11 The CCC further held that, once a finding is tabled to the Council of ICASA, Council is entitled to accept or reject such a finding. The CCC becomes <i>functus officio</i> and is precluded from adjudicating the matter. The decision becomes that of ICASA. Should any party be</p>	
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	aggrieved by the Authority's decision, it should be taken on review.	
5.	<p>Notice of public hearing on the Draft Must Carry Amendment Regulations for Council approval and publication</p> <p>The purpose of the submission was to request the Council to approve the Notice to hold public hearings on the Draft Must Carry Amendment Regulations 2021 for publication in the Government Gazette.</p> <p>5.1. The Must Carry Committee is in a process to review the Regulations on Must Carry obligations published in Government Gazette No 31500 of 10 October 2008. The Authority is reviewing the Regulations in line with section 60(3) of the Electronic Communications Act of 2005, which states that:</p> <p><i>“the Authority must prescribe regulations regarding the extent to which subscription broadcast services must carry, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee”.</i></p> <p>5.2 The Committee published the Discussion Document on 13 December 2019, in the Government Gazette 42902, and received two (2) written submissions on the Discussion Document from SABC and MultiChoice.</p> <p>5.3 The Authority received further written submissions from stakeholders, namely e.tv, MMA/SOS, SABC and MultiChoice. All written submissions indicated that they were interested in making</p>	The recommendation was approved.

	oral presentations at the public hearings.	
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ISSUED BY: Secretariat Office
on behalf of Council