



## Independent Communications Authority of South Africa

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### COUNCIL DECISIONS– 29 MARCH 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p><b>State of the ICT Sector report in South Africa 31st March 2021</b></p> <p>The purpose of the submission was to request Council to approve the State of the Information and Communication Technology (ICT) Sector in South Africa Report for publication.</p> <p>1.1. As part of its mandate, the Authority collects and collates statistics on the performance and the growth of the ICT sector.</p> <p>1.2. The Report contains data from secondary sources, Statistics South Africa (“StatsSA”) and OOKLA, as well as data collected from licensees through detailed questionnaires. The information collected by Authority covers a period of 12 months ending on the 30th September each year.</p> <p>1.3. The data was received from a total of ninety-eight (98) ECS and ECNS licensees, twenty-eight (28) from television and radio broadcasters’ licensees and six (6) from postal service licensees.</p> <p>1.4. The Three (3) main amendments made to the report pertain to the inclusion of a graphic cover letter, the removal of the formula used to</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>calculate smart phone penetration, and the removal of the sentence that stated that most households have access to internet but indicated that over 60% of households have one person who has access to the internet.</p> <p>1.5. It was recommended that Council considers and approves the State of the ICT sector in South Africa for publication on the Authority's website.</p> <p><b>The recommendation was approved.</b></p>	
2.	<p><b>Submission of Broadcasting Annual Compliance Reports for Individual Sound Broadcasting Services Licensees.</b></p> <p>The purpose of the submission was to request Council to note and approve the nineteen (19) Annual Compliance Reports (ACRs), for Sound Broadcasting Service Licensees ("SBS"), compiled for the period under review as part of the sixty (60) ACR's required in terms of the Compliance Operational Performance Plan ("OPP") for the 2020/2021 Financial Year.</p> <p>2.1. The ICASA Act imposes an obligation on the Authority to monitor and enforce compliance with licence conditions and Regulations consistent with the objects of the ICASA Act and the underlying statutes.</p> <p>2.2. There are 248 operational Licensees whilst the remainder (20), are non-operational.</p>	<b>The recommendation was approved by Council.</b>

	<p>2.3. Compliance reports in respect of broadcasting services provided by all individual commercial broadcasters are compiled annually. With respect to the stations – both commercial and public – that are licensed to the SABC, the Authority prepares compliance reports for all its (SABC) broadcasting sound services.</p> <p>2.4. For Public as well as Commercial Broadcasters, it is important to monitor compliance with local content quotas; assess their fulfilment of any promises of performance or social obligations (where applicable) and ensure payment of their annual contributions towards the Universal Service and Access Fund (USAF). The SABC only contributes towards USAF.</p> <p>2.5. Three (3) Commercial Radio Stations did not fully comply, with their licence terms, and conditions and regulatory requirements; namely Classic FM, East Coast Radio and Power FM.</p> <p>2.6. The two (2) public subscription television licensees complied with their licence terms and conditions.</p> <p>2.7. Free -to -Air Television Licensee (E.TV) did not fully comply with the DTT Regulations, 2012, as the commercial agreement with an electronic communications network service Licensee, to provide signal distribution services for digital broadcasting was not submitted.</p>	
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	<p>2.8. Thirteen (13) Community Radio Stations that formed part of the submission, three (3) fully complied with its licence terms and conditions; namely Al Ansaar Durban, Al Ansaar Pietermaritzburg and Radio Khwezi. Ten (10) community radio stations did not fully comply, with their licence terms and conditions and regulatory requirements; namely EKFM, Inakakelo FM, Kopsie FM, Radio KC, Radio Hindvani, Radio Pulpit, Sedibeng FM, Tuks FM, UJ FM and QwaQwa Radio.</p> <p><b>The recommendation was approved.</b></p>	
3.	<p><b>The ICT COVID – 19 Regulations Compliance Report 2020/2021</b></p> <p>The purpose of the submission was to request Council to consider and approve the ICT COVID -19 Regulations Compliance Report 2020/2021.</p> <p>3.1. The COVID-19 Regulations also imposed various obligations on existing Electronic Communications Network Service (ECNS) and Electronic Page 2 of 3 Communications Service (ECS) Licensees such as the two mandatory SMS's relating to COVID 19 to be sent to all consumers as well as obligations to zero-rate various educational sites for the duration of the National State of Disaster.</p> <p>3.2. The COVID-19 Regulations further made provision for the licensing of radio frequency spectrum(RFS) in the 700 MHz, 800 MHz, 2300 MHz, 2600 MHz and 3500 MHz bands on a temporary basis, including the use</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>of TV Whitespaces (“TVWS”) to enable licensees to deal with the anticipated rise in demand for network capacity or data services and enhance their current services.</p> <p>3.3. On 17 April 2020, the Authority announced the following successful licensees that were assigned the temporary radio frequency spectrum in terms of the COVID-19 Regulations:</p> <p>3.4. Liquid Telecommunications Operations SA (Pty) Ltd; Mobile Telecommunications Network SA (Pty) Ltd; Rain Networks (Pty) Ltd; Vodacom (Pty) Ltd; and Telkom SA SOC Ltd.</p> <p>3.5. The Compliance Division has noted that the Regulations have largely been adhered to and the requisite compliance was by and large achieved. There was also little or no difficulty on the part of the Authority, to receive the relevant compliance information it required from time to time.</p> <p><b><u>Recommendation to Council</u></b></p> <p>It was recommended that Council approve the first iteration of the ICT COVID 19 Regulations Compliance Report for 2020/2021 that will form the basis for future updates and reporting until the end of COVID-19 Regulations cease to be in effect.</p> <p><b>Council resolved to approve the recommendation.</b></p>	
4.	<p><b>Municipal Elections Broadcasts and Political Advertisements Amendment Regulations 2021.</b></p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>The purpose of the submission was to request the Council to approve the Municipal Elections Broadcast and Political Advertisements Amendment Regulations and the Reasons Document, for publication in the government gazette.</p> <p>4.1. The Municipal Elections Broadcast and Political Advertisements Amendment Regulations are set to determine and prescribe the framework and guidelines under which Party Election Broadcasts (PEBs) will be conducted and carried by various licensees during the elections.</p> <p>4.2. The review process is aimed at improving the regulations to ensure relevance and best practice model. The review process also presents the Authority with an opportunity to provide clarity to stakeholders on different responsibilities and expectations for Broadcasting Service Licensees ("BSLs") and parties contesting the election during the elections broadcasting period and the elections period.</p> <p>4.3. In a judgement handed down on 11 June 2020, the Constitutional Court ruled that Parliament was to change the Electoral Act to include provisions that allow Independent Candidates to compete in National Elections. With the judgement being recent, the Committee anticipated that these concerns may be raised again on the necessity to make provision to allocate PEBs to Independent Candidates as well.</p> <p>4.4. As a result of the abovementioned Constitutional Court judgement, and the submissions made by</p>	
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	<p>stakeholders pertaining to the 2011 and 2016 regulations review and during consultation workshops, were it was stated that the regulations ought to make provision to allocate the PEB slots to Independent Candidates, since they were allowed to contest for the Municipal Elections. These workshops were also used to inform the stakeholders of the responsibilities, and limitations of the Authority.</p> <p><b>Council resolved to approve the recommendation.</b></p>	
5.	<p>Approval of Digital Sound Broadcasting (DSB) Services Regulations and Reasons Document for publication in the Government Gazette</p> <p>The purpose of the submission was to request Council to approve the Digital Sound Broadcasting (DSB) Services Regulations and Reasons Document for publication in the Government Gazette.</p> <p>5.1. On 29 March 2018, the Authority published the Discussion Document on DSB. A year later on the 29 March 2019, the Authority published the Findings Document and Position Paper on the use of DSB in South Africa.</p> <p>5.2. On 10 July 2020 and 9 October 2020, the Minister published a Policy Direction on the introduction of DSB in South Africa (Government Gazette No. 43514 of 10 July 2020), and the Draft White Paper on Audio and Audio Visual Content Services Policy Framework: A New Vision for South Africa 2020 (Government Gazette No. 43797 of 9 October 2020) for public comment respectively.</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>5.3. On 20 to 21 January 2021, the Authority held public hearings (virtually). Out of the fifteen (15) stakeholders that made written submissions, the Authority received non-participation confirmation from two (2) stakeholders, namely the National Association of Broadcasters (NAB) on 08 January 2021, and African Media Entertainment (AME) on 13 January 2021.</p> <p>5.4. The Minister has been informed of the finalization of the DSB Services Regulations and Reasons Document. Furthermore, and was also provided with a copy of the Draft DSB Services Regulations.</p> <p><b>Council resolved to approve the recommendation.</b></p>	
6.	<p><b>Recommendation by Complaints and Compliance Committee (“CCC”) to Council in the matter between F. H. Jhavary and Telkom SA SOC Ltd (“Telkom”)</b></p> <p>The purpose of the submission was to request Council to approve the recommendation of the Complaints and Compliance Committee (“CCC”) in the matter between F. H. Jhavary (“Complainant”) and Telkom SA SOC Ltd (“Telkom”).</p> <p>6.1. On 12 August 2020, the Complainant lodged a complaint with the CCC against Telkom as set out in the following allegations:</p> <p>6.2. That Telkom has contravened Regulation 4(1)(a) of the End-User and Subscriber Service Charter Regulations of 2016, as amended (“the Regulations”).</p>	<b>The recommendation was approved by Council.</b>



	<p>6.2.1 The Complainant alleged that Telkom revoked and/or changed the terms and conditions of the contract he agreed to without notifying him of such changes.</p> <p>6.2.2 That Telkom has contravened Regulation 2(b) and (c) of the Regulations.</p> <p>6.2.3 The Complainant alleged that Telkom, through its staff members, breached Regulation 2 by giving him different versions to one contract that he agreed to and failing to resolve the dispute which is a result of poor communication or incompetency on the part of Telkom. He alleged that he has had more 100 calls with different staff members and each time did not get a satisfactory resolution to his complaint</p> <p><b><u>Recommendation by the CCC to Council:</u></b></p> <p>6.3. That Telkom provides or continues to provide Mrs Jhavary with a free LTE modem which is not tied to a 24-month contract.</p> <p>6.4. That Telkom continues Mrs Jhavary's LTE service on a month-to month basis once migrated from ADSL to LTE (the migration is at no extra cost).</p> <p>6.5. Telkom is required to provide within 21 working days after this judgment</p>	
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	<p>is issued by the Secretary of the ICASA Council, and copied to the Coordinator of the CCC, with an affidavit that it has so provided/has already provided the Complainant with what is abovementioned.</p> <p>6.6. Telkom must also confirm that the requirement in the proposed settlement that the complaint be withdrawn was not repeated as a condition.</p> <p><b>Council resolved to approve the recommendation.</b></p>	
7	<p><b>Regulations on equity ownership by Historically Disadvantaged Groups and the application of the ICT Sector Code in the ICT sector in terms of Section 4b of the ICASA Act</b></p> <p>The purpose of the submission was to request Council to approve the Regulations on Equity Ownership by Historically Disadvantaged Groups (HDGs) and the application of the ICT sector code in the ICT sector, the accompanying explanatory memorandum, for publication in the Government Gazette and for Council to note the Regulatory Impact Assessment (RIA) report in respect of the HDG Regulations.</p> <p>7.1. On 14 February 2020, the Authority published Draft Regulations. The Draft Regulations emanated from the Authority's Findings and Position Paper on the Inquiry into Equity Ownership by HDGs and the application of the ICT Sector Code in the ICT Sector published on 15 February 2019.</p> <p>7.2. The Authority invited written representations on the Draft Regulations from interested parties</p>	<p><b>The recommendation was differed to the next meeting of Council.</b></p>

	<p>with a closing date of 3 April 2020 which was extended to 18 April 2020 due to Covid-19 pandemic. Twenty-five (25) submissions received by the Authority, and from those, twenty-one (21) parties expressed their willingness to participate in the public hearings.</p> <p>7.3. The Authority held public hearings on 19, 20 and 23 November 2021 to give the Authority an opportunity to engage in greater detail with the submissions submitted by the above-mentioned stakeholders; ask questions of clarity and request additional information where necessary. Only eighteen (18) stakeholders made oral representations at the hearing.</p> <p>7.4. Through a service provider, an RIA report of the Authority's proposed regulations on limitations of control and equity ownership by HDGs and the application of the ICT sector was prepared.</p> <p>Recommendations</p> <p>7.5. It was recommended that Council approves the vetted HDI Regulations and Explanatory memo for publication in the government gazette.</p> <p>7.6. Notes the Regulatory Impact Assessment Report.</p> <p><b>The recommendation was deferred to the next Council meeting due to the above inputs.</b></p>	
8	<p><b>Request for Council Approval of Final Sports Broadcasting Service Regulations Amendment, 2021 and</b></p>	<p><b>The recommendation was approved by Council.</b></p>

**Reasons Document for the Publication in the government Gazette**

The purpose of the submission was to request the Council to approve the final Sports Broadcasting Services Regulations Amendment and the Reasons Documents for publication in the government gazette.

8.1. The Committee published the 2nd Draft Regulations on Sports Broadcasting Services on 9 of December 2019, with the closing date of 15 of December 2020. Upon the closing date, the Authority received thirteen (13) submissions.

8.2. The submissions received were from the sports fraternity, civil society organisations, individuals, and broadcasters (eMedia, SABC, and MultiChoice). No new issues were raised in the 2nd round of consultations. However, the Authority requested additional information from some MMA/SOS, Mr Rendani Pharamela and Mr Jeremy Evans, and that was received in February 2021.

8.3. The Authority met with the Minister of Communications and Digital Technologies (DCDT) in January 2020 and also with both the Ministers of Communications and Sports, Arts and Culture in February 2020. Subsequent to the joint meeting with the Ministers, the Committee also received the submission from the Department of Sports, Arts, and Culture on the 05 of April 2020.

8.4. On 16 September 2020, the Authority submitted the 2nd Draft

	<p>Regulations, Explanatory Memorandum, and additional submissions to the DCDT.</p> <p>8.5. On 12 October 2020, the Authority received a letter from the Ministry whereby the Draft Regulations and Explanatory memorandum were supported for publication in the Government Gazette.</p> <p><b><u>Recommendations</u></b></p> <p>The Committee recommended that Council approves the Final Regulations and Reasons document for publication in the Government Gazette.</p> <p>The recommendation was approved.</p>	
9	<p><b>Council to note the Commissioning and establishment of the fixed monitoring site in the Karoo Central Astronomy Advantage areas for the protection of the square kilometre Array Project in the Northern Cape Province</b></p> <p>The purpose of the submission was to inform and update Council of the achievement on the commissioning and establishment of a fixed monitoring site in the Central Karoo Astronomy Advantage Area (AGA) as part of the APP target for 2020/2021 financial year viz. Spectrum Monitoring Capacity Established” overseen by AGA Committee.</p> <p>9.1. ICASA signed a Memorandum of Agreement (MoA) with the Department of Science and Innovation (DSI) and the South African Radio Astronomy Observatory (SARAO) on 24 April 2018.</p> <p>9.2. The MoA provides a framework and mechanisms for cooperation</p>	<p><b>The recommendation was noted by Council.</b></p>

	<p>between the Parties and for the preservation and protection of the declared Karoo Central Astronomy Advantage Areas (“KCAAA”) in terms of the provisions of the Astronomy Geographic Advantage Act, 2007 (Act no. 21 of 2007) (the AGA Act).</p> <p>9.3. The AGA Council Committee was also established to provide amongst others an oversight on all activities in the KCAAA in line with ICASA’s mandate and further advice and appraise Council on development relating thereto.</p> <p>9.4. The project was designed to establish one fixed site in the Karoo Central Astronomy Advantage Areas (KCAAA), was completed on 25 March 2021. On 26 March 2021, the AGA Committee received a site acceptance report from E&amp;T Division regarding the commissioning of the monitoring site in the KCAAA.</p> <p>9.5. In order to provide sufficient and adequate coverage over the SKA radio-telescopes, protection zones and surrounding towns, a further three (3) sites have been earmarked for completion in subsequent years in line with the APP, in the following towns Carnarvon, Williston, Brandvlei, and Van Wyksvlei.</p> <p><b><u>Recommendations</u></b></p> <p>It was recommended that Council notes the site acceptance report for the successful establishment and commissioning of one (1) fixed spectrum monitoring site in Carnarvon, Northern Cape and the achievement of the associated 2020/2021 APP target.</p>	
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	<b>The recommendation was noted and accepted.</b>	
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**ISSUED BY: Secretariat Office**  
**on behalf of Council**