

KMR/034/24
6 December 2024

Attention: The Chairperson

Independent Communications Authority of South Africa
350 Witch-Hazel Avenue
Eco-Park Estate
Centurion
0144

By email: chairperson@icasa.org.za

Dear Chairperson

APPLICATION SUBMITTED IN TERMS OF SECTION 10(1) OF THE ELECTRONIC COMMUNICATIONS ACT, 2005

1. Introduction

- 1.1 Kagiso Media (Proprietary) Limited ("**Kagiso Media**") (previously KTH Media Investment (Proprietary) Limited) is the holder of an individual broadcasting service licence (No. 004/RE/COMMERCIAL/R/SEPT/19) (the "**Licence**") issued to it on 4 June 2019 by the Independent Communications Authority of South Africa ("**ICASA**"). A copy of the Licence is attached, marked "A". Pursuant to the Licence, Kagiso Media operates a commercial sound broadcasting service, known as East Coast Radio ("**East Coast Radio**").
- 1.2 East Coast Radio's broadcasting footprint covers the province of Kwa-Zulu Natal. Owing to the consistency of high level of programming; the showcasing of regional talent (in particular); and the commitment to its surrounding communities, East Coast Radio is currently one of South Africa's largest commercial regional radio stations.

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Company Secretary: MH Governance (Pty) Ltd Reg. 2019/605227/07

1.3 In terms of the Licence, East Coast Radio is required to comply with several obligations, including the following local content obligations, which East Coast Radio proposed as part of its Licence renewal application during the course of 2018:

- 1.3.1 support a minimum of 10 live music performances per year (Clause 5.1.1);
- 1.3.2 profile a minimum of 50 South African composers per year (Clause 5.1.2);
- 1.3.3 engage in a minimum of 10 joint promotions and competitions with record companies and advertisers per year (Clause 5.1.3);
- 1.3.4 play and promote local music demonstration tapes in the form of a three-hour show on Sunday dedicated to showcasing local artists that are included as part of the radio station's music playlist (Clause 5.1.4);
- 1.3.5 host at least one East Coast Radio live music concert per annum. The live concert must host a minimum of fifty South African musicians, at least one featured artist must be from KwaZulu-Natal (Clause 5.2)

(collectively, the "**Licence Obligations**").

1.4 The 2022/2023 Annual Compliance Report in respect of East Coast Radio, issued by ICASA in March 2024 ("**Compliance Report**"), states that East Coast Radio (and/or Kagiso Media, as appropriate) complies with:

- 1.4.1 clauses 1.1, 1.2, 1.3, 2, 3, 4, 6, 7, 8 of the Licence;
- 1.4.2 clause 1 of the schedule to the Licence;
- 1.4.3 regulation 3(2) of the ICASA South African Music Content regulations, 2016;
- 1.4.4 the Universal Service and Access Fund Regulations; and
- 1.4.5 ICASA's General Licence Fee Regulations.

1.5 However, the Compliance Report notes that East Coast Radio "*partially complies*" with clause 5.1 (and the sub clauses 5.1.1, 5.1.2, 5.1.3 and 5.1.4) of the Licence. A copy of the Compliance Report is attached, marked "B".

- 1.6 Although the Licence Obligations were proposed by East Coast Radio in 2018, they were proposed on the basis that East Coast Radio was, in its considered view, able to comply with the Licence Conditions and that these Licence Conditions would be comparable to the licence conditions of the prior licence period. In fact, the revised conditions connect East Coast Radio's former obligation to "profile" fifty local artists across the broadcast year with its obligation to host a live music event, such that Clause 5.2 provides that "The Licensee shall Host:" (5.2.1) "At least one ECR live music concert per annum", and (5.2.2) "the live concert should host at least fifty South African musicians, at least one featured artist must be from Kwazulu-Natal".
- 1.7 The licence conditions proposed by East Coast Radio were further however, prior to the: (i) Covid-19 Pandemic and therefore prior to the social and economic challenges faced today; and (ii) the technological advancements (discussed below) which have generally impacted the radio broadcasting industry in South Africa.
- 1.8 Section 10 of the Electronic Communications Act, 2005 ("**ECA**") states that ICASA may amend an individual licence after consultation with the licensee and having regard to several considerations, including whether the amendment is necessary to ensure the achievement of the objectives of the ECA.
- 1.9 East Coast Radio is seeking to amend its Licence Obligations as follows:
- 1.9.1 support a minimum of 10 live music artist performances per year;
 - 1.9.2 profile a minimum of 50 South African composers on-air and/or on the Licensee's digital platforms per annum;
 - 1.9.3 play and promote local music demonstration tapes (demo tapes) in the form of a three-hour show once a week within the performance period, which is dedicated to showcasing local artists and trial them for inclusion in the music playlist; and
 - 1.9.4 host one ECR live music concert per annum at which ECR showcases South African musicians, at least one of which must be from KwaZulu-Natal,
- (collectively, the "**Revised Obligations**").
- 1.10 This application is submitted in terms of section 10(1) (the "**Amendment Application**") of the ECA and relates to the amendment of the Licence Obligations. In particular,

Kagiso Media proposes that the Licence Obligations be amended on the basis of the proposed Revised Obligations.

- 1.11 Kagiso Media submits that ICASA's approval of this Amendment Application is consistent with the provisions of the ECA and does not depart from the objective of the ECA.
- 1.12 This Amendment Application is structured as follows:
 - 1.12.1 Part A: we describe the regulatory framework that governs an application for an amendment under section 10(1) of the ECA;
 - 1.12.2 Part B: we briefly discuss East Coast Radio, its role in the commercial radio broadcasting space and the impact of several social and economic factors on its ability to observe the Licence Obligations that underscore the purpose of the Amendment Application; and
 - 1.12.3 Part C: we discuss the Revised Obligations and give reasons as to why the Amendment Application should be granted.

PART A: THE REGULATORY FRAMEWORK

2. ECA

- 2.1 The ECA is the primary legislation which regulates the electronic communications industry in South Africa.
- 2.2 As noted above, section 10(1) of the ECA provides that ICASA may amend a licence following consultation with the licence holder, subject to the requirements in the ECA. Importantly, any such amendment must not depart from the objects and principles set out in section 2 of the ECA. That is, an amendment granted in terms of section 10(1) must be consonant with the objects of the ECA. In this regard, Kagiso submits that the Amendment Application does not depart from the objects of the ECA.

PART B: CONSIDERATIONS RELEVANT TO THE AMENDMENT APPLICATION

3. Background and context

- 3.1 East Coast Radio was started on 1 May 1967, broadcasting as Radio Port Natal. Following a technology upgrade, the station was rebranded to RPN Stereo and following its purchase by Kagiso Media in 1996, was renamed East Coast Radio.
- 3.2 At this time, the public was limited in the way it could access entertainment and entertainment related services. The South African public was predominantly reliant on radio and television broadcasting services and live events for accessing media, news and music content, entertainment and entertainment related services. As a result, advertisers and event organisers/hosts relied on: (i) radio and television broadcasting services; and (ii) the sponsorship of live events, to effectively reach consumers. Similarly for East Coast Radio, (i) national and regional advertisers purchased advertising spots on the station which generated advertising revenue for the station; and (ii) event organisers/hosts in the KwaZulu Natal region negotiated deals with the station to advertise live events and profile the sponsors of such events.
- 3.3 With broadcasting being the primary content-generating and provisioning platform, radio broadcasters like East Coast Radio were in a strong bargaining position with advertisers, event hosts and event sponsors given that the consumers of that time essentially listened to the radio or watched television, to access content and entertainment and to be informed about live entertainment events, including music events. Plainly put, broadcasters were in a unique position in terms of their ability to communicate with and advertise to consumers. As such, advertisers invested heavily in advertising on broadcasting platforms and the advertising revenue of broadcasters during this time was substantial.
- 3.4 During these years, the focus of the music industry was on the physical sales of recordings. Additionally, there was significant budget for the promotion of the music industry's new and established artists, and it was therefore commonplace for radio stations, like East Coast Radio, and record companies to run joint promotions whereby the record company would supply a prize, and the radio station would supply promotional airtime at discounted, nominal, or no cost to the record company.

- 3.5 With technological advancements, the focus has been diverted from the physical sale of records, to the digital downloading of music and to the streaming of music online. These changes have impacted radio broadcasting services, prompting radio broadcasters to also embrace the changes.
- 3.6 These developments have also meant that, ever increasingly, artists choose different career paths, including independent production and distribution through digital and streaming platform.
- 3.7 From a consumer perspective, there are an increasing number of online platforms from which to access and consume music, news and other entertainment from the comfort of their homes. The proliferation of digital platforms from which content (including news and music) is consumed has put pressure on the advertising revenue growth prospects of radio broadcasters. With over 70% of South Africans connected on a mobile device, digital access to music and general media content increases every year. Although East Coast Radio keeps pace with these developments and is also an innovator in, for example, the digital publishing, radio streaming, social media and podcasting areas (to name a few), such developments and innovations come at a significant cost against low revenue returns.
- 3.8 This notwithstanding, East Coast Radio has worked tirelessly to provide quality content, including music, news and infotainment to its listeners. As of September 2023, East Coast Radio boasts a listenership of approximately 1,169,000.
- 3.9 East Coast Radio takes great pride in the steady growth it has seen since its establishment and is particularly proud of how it has become ubiquitous amongst the people of Kwa-Zulu Natal. The successes of East Coast Radio do not, however, mean that it is immune to the social and economic challenges of the present day.

4. **Current market conditions and economic constraints**

- 4.1 Although the COVID-19 lockdown restrictions and related social distancing measures imposed under the National State of Disaster Regulations, 2020 published by Government Notice No R.465 in Government Gazette No GG43232 were lifted with effect from 5 April 2022, it is accepted that market conditions in South Africa have not yet recovered to pre-pandemic conditions, including in relation to radio/sound broadcasting services. For example, it is projected that radio advertising revenue will

remain below pre-pandemic levels for the foreseeable future despite radio remaining a powerful broadcasting medium in South Africa.¹

- 4.2 In addition, the significant economic downturn experienced in South Africa over the past 24 months is exacerbated by issues such as loadshedding and water shedding which has increased operating costs for businesses.²
- 4.3 Importantly, the challenging market and economic conditions are not only being faced in South Africa but globally as well.
- 4.4 In relation to hosting of live events, multiple live music concerts and festivals have been cancelled around the world citing reasons such as financial challenges; slow ticket sales due to soaring ticket prices; increased production costs and safety concerns.³ Additionally, advertisers and event sponsors are less willing to support the hosting of live music events than in the past given the economic and financial challenges being faced globally.

5. **Hosting live music events**

- 5.1 It is well understood that the hosting of live music events requires considerable resources, logistics, organisation and co-ordination. Typically, the organisation and execution of a successful live music event (regardless of its size) requires: (i) considerable upfront financial backing; and (ii) a co-ordinated effort from multiple stakeholders. It is for this reason that the success of live music events is contingent on securing sponsors that are willing to provide significant upfront investment, in exchange for sponsorship rights they deem to be commercially beneficially.
- 5.2 Before a live music event is even advertised to consumers, event organisers/hosts must already have budgeted for and incurred costs to, amongst other things, book a venue; book artists that are interested in performing at the event; obtain regulatory and legal approvals and licences relevant to the hosting of the event at the venue; toilet facilities; and book event security. From a South African perspective, event

¹ PWC Africa Entertainment & Media Outlook Report for 2023 – 2027, dated November 2023.

² The World Bank in South Africa Report, dated 5 April 2024

³ <https://www.ticketfairly.com/word/2024/06/13/why-are-music-festivals-getting-cancelled/>

organisers/hosts need to incur additional costs to secure back up electricity in the form of generators.

- 5.3 The cost of hosting live music events is significant. Importantly, hosting of live music events is also subject to risks such as last-minute cancellation due to factors out of the control of the event organiser/host, like bad weather; artists pulling out due to illness; slow ticket sales and security concerns.
- 5.4 East Coast Radio is required, in terms of the Licence to host a live music event with a minimum of 50 South African musicians. East Coast Radio relies heavily on third party sponsors to provide the funding required to host a live music event that meets the criteria of the Licence.
- 5.5 Additionally, there are several practical issues associated with hosting a live music event with a minimum of 50 South African musicians for East Coast Radio to meet the criteria of the Licence. These practical issues include the construction of sets of the different musicians and the time it takes to change the equipment and sets of the different musicians. This alone is labour intensive and in totality takes a significant period of time to execute. Another issue is the allocation of time to the different musicians to perform their respective sets. The general trend is to allocate artist with 45 to 60 minutes each.
- 5.6 In East Coast Radio's experience, the economic downturn in South Africa over the past 24 months and the resulting commercial constraints on businesses and consumers has resulted in event sponsors becoming more circumspect about: (i) the amount of sponsorship they are prepared to provide for live music events and the return on their investment; and (ii) how sponsorship money is spent.
- 5.7 As mentioned above, the instability of South Africa's economy has impacted on East Coast Radio's ability to plan and budget for a large, hosted live music event. As with all businesses, East Coast Radio allocates funds to various projects for its upcoming financial year. The issues noted above regarding reduced advertising and sponsorship revenue has meant that East Coast Radio can no longer allocate funding in the same way it did in the past. The inability to plan long term means that a commitment to host a large live event with a minimum of 50 South African musicians a year is simply not possible in circumstances where East Coast Radio cannot reasonably project what its income streams will look like in the relevant period.

- 5.8 Although the economic conditions have not crippled the live music events industry, it has resulted in the nature of live music events changing due to the significant costs associated with hosting the events, the practical challenges faced by event organisers/hosts, the value of sponsorships being lower; and decreased spending by consumers. The reality is that although live music events are still hosted in South Africa, the scale of these events has been reduced.
- 5.9 Currently, live music events very rarely include ensembles that number fifty or more musicians at a single event. As mentioned above and by way of example, if East Coast Radio were to host a live music event with at least 50 musicians and each of the musicians were allocated a 30 minute slot (which is less than the norm), and each set change was allocated 20 minutes, the event would need to be run over multiple days it would take approximately 42 hours to run through each set and to change each of the artists sets. The costs associated with such an event is prohibitive for East Coast Radio as additional costs would need to be incurred for artists to be accommodated, fed and transported. This would also have a significant impact on the cost of tickets which is likely to result in few attendees.
- 5.10 Although it could be argued that East Coast Radio could host a live event with bands with large ensembles to reach the minimum requirement of 50 musicians, our view is that this approach will prejudice solo musicians and smaller bands.
- 5.11 Put differently, the scale of a minimum requirement of 50 musicians being showcased in a single East Coast Radio hosted event, is not consistent with the norms of the live music events industry given:
- 5.11.1 the real-life effect of the financial gap resulting from reduced sponsorship will result in a poorly executed event;
 - 5.11.2 the costs of hosting an event of this nature is prohibitive for East Coast Radio. The artist costs would therefore need to be transferred to the consumers through increased ticket prices which, in the South African context, cannot be borne by the consumers and attendance will be poor; and
 - 5.11.3 the significant practical difficulty in hosting an event at which 50 South African musicians are showcased.

- 5.12 While East Coast Radio remains able to *support* a minimum of 10 live music performances per annum as specified in the Licence, it is not, for the reasons set out in this Amendment Application, realistic or practical for East Coast Radio to *host* a single live music event in which a minimum of 50 South African musicians are required to be showcased.

6. Promotions and competitions with record companies

- 6.1 As mentioned above, market and economic conditions have resulted in strategic joint promotions and competitions between radio broadcasters and record companies reducing. The various technology shifts mentioned above have created options for consumers to access entertainment and discover music. The effect of this is that advertisers are splitting the financial resources available for promotional activity between traditional broadcasting and focussing more on digital and online advertising given the growth in that sector.⁴
- 6.2 In addition, the ability of record companies to participate in such initiatives has dwindled substantially in recent years given that many artists prefer to independently release their music digitally.
- 6.3 The reality is that there is less of an incentive for record companies, and consequently less interest from them, to participate in promotional and competition activities with radio stations. The ability of a radio station such as East Coast Radio to run a successful promotional event is heavily reliant on record companies and sponsors to invest in promotions and competition. Whilst East Coast Radio is able to contribute airtime to competitions and/or promotions, it is not able to self-fund the physical prizes that are necessary.
- 6.4 The trends noted above regarding record companies and advertisers have a direct impact on East Coast Radio's ability to comply with the Licence Obligations. The decline in interest by both record companies and advertisers to take part in these initiatives has a corresponding and proportional impact on East Coast Radio's ability to run such initiatives. As such, East Coast Radio is left in a position where committing

⁴ PWC Africa Entertainment & Media Outlook Report for 2023 – 2027, dated November 2023.

to any such initiatives in a year exposes it to the risk of continued non-compliance due solely to external factors which are beyond its control.

PART C: THE REVISED OBLIGATIONS AND THE GRANTING OF THE AMENDMENT APPLICATION

7. General note

- 7.1 At the outset, Kagiso wishes to emphasise that it acknowledges, and in fact embraces, East Coast Radio's position in society as a medium through which positive social change can be affected. As can be seen from the Compliance Report, East Coast Radio takes its Licence obligations seriously and has complied with almost all of the obligations in earnest, and in most cases, surpassed its compliance obligations.
- 7.2 It is with the above context that East Coast Radio categorically states that it does not, through the Revised Obligations, seek in any way to circumvent its obligations but rather, wants to ensure that its Licence obligations can be observed having regard to the realities of the present day.
- 7.3 In relation to live music events, the Compliance Report notes the difficulties created by the COVID-19 pandemic and its on-going impact on the ability to host live music events post pandemic. In relation to joint promotional activities with record companies, although East Coast Radio was not able to engage extensively in these activities for the reasons set out above, East Coast Radio has nevertheless taken the initiative to profile artists (through articles and videos) on its digital platforms. This is in addition to East Coast Radio showcasing artists online when in studio using Facebook live.

8. Specific amendments

- 8.1 The Revised Obligations are proposed for the reasons details in this Amendment Application.
- 8.2 For easy reference, a table comparing the Licence Obligations with the Revised Obligations is set out below. Additions are shown in underline and deletions are shown in ~~strike through~~.

Clause reflected in the Licence	Licence Obligation	Revised Obligations
5.1	The Licensee shall adhere to a four-point plan, namely:	
5.1.1	support a minimum of ten live music performances per annum.	support a minimum of ten live music performances per annum.
5.1.2	profile a minimum of 50 South African composers per annum.	profile a minimum of 50 South African composers <u>across its on-air and digital platforms</u> per annum
5.1.3	engage in a minimum of ten joint promotions and competitions with record companies and advertisers per annum.	engage in a minimum of ten joint promotions and competitions with record companies and advertisers per annum.
5.1.4	play and promote local music demonstration tapes (demo tapes) in the form of a three-hour show on Sunday which is dedicated to showcasing local artists and to be part of the music playlist.	play and promote local music demonstration tapes (demo tapes) in the form of a three-hour show <u>once a week on Sunday which is dedicated to showcasing local artists that are considered for inclusion</u> in the music playlist.
5.2	The Licensee shall host:	
5.2.1	At least one East Coast Radio live music concert per annum.	At least one East Coast Radio live music concert per annum.
5.2.2	The live concert must host a minimum of fifty South African musicians, at least one featured artist must be from KwaZulu Natal.	The <u>East Coast Radio</u> live <u>music</u> concert must host a minimum of fifty South African musicians, at least one <u>of which must be featured</u> artist must be from KwaZulu Natal.

- 8.3 In our view, a change to the Licence Obligations as expressed in the Revised Obligations better allows East Coast Radio to meet its Licence obligations having regard to the commercial and economic realities in which it now operates. Furthermore, the amendment will allow East Coast Radio to observe obligations that relate to activities which are wholly in East Coast Radio's control (i.e. less reliance on third party funding).

- 8.4 Importantly, the Revised Obligations must be aligned to the objects of the ECA. In our view, the Revised Obligations not only align with the objects of the ECA but also enhance the ability of East Coast Radio to play a role in realising the objects of the ECA.

9. Granting of the Amendment Application

- 9.1 As noted in the Independent Communications Authority of South Africa Act, 13 of 2000, ("**ICASA Act**") ICASA was established to, amongst other things, regulate broadcasting so as to ensure fairness and a diversity of views representing South African society. Importantly, such regulation is required to be in the public interest and it is within this context, that the ICASA Act provides one of ICASA's functions as being the development, monitoring and enforcement of licence conditions and regulations consistent with the objects of the ECA.
- 9.2 The approval sought will not militate against the objects of the ECA including the following:
- 9.2.1 the promotion of competition in the ICT sector;
 - 9.2.2 promoting the interests of consumers with regard to the price, quality and the variety of services;
 - 9.2.3 promoting the provision and development of a diverse range of sound and television broadcasting services on a national, regional and local level, that cater for all languages and cultural groups and provided entertainment, education and information; and
 - 9.2.4 ensuring the provision of a variety of quality broadcasting services.

Yours sincerely



Nick Grubb
CEO - KAGISO MEDIA RADIO