



Busisiwe Mashigo

Manager: Broadcasting Compliance

ICASA

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18 June 2021

Without Prejudice

Dear Ms Mashigo

SETTLEMENT AGREEMENT ICASA V VUMA (CCC 404/2020)

1. We act on behalf of Vuma FM (Pty) Ltd (Vuma).
2. Further to the hearing before ICASA's Complaints and Compliance Committee (CCC) in relation to CCC 404/2020 which was heard on 14 May 2021. At the hearing, the CCC requested that the parties revise their settlement offer to make it clear what issues were being conceded as part of the settlement in order to ensure that the CCC was satisfied that all the charges in the charge sheet had been dealt with comprehensively as part of the settlement agreement.
3. However, both parties wish to stress that there is a mutual understanding and sympathy for the circumstances that gave rise to the non-compliance in the first place. Further, and most importantly, the settlement proposal arises, primarily, out of an intervening fact, namely, the approval by the ICASA Council of certain amendments to Vuma's commercial sound broadcasting service licence which directly impact two of the key issues which are the subject of the Icasa Consumer Affairs Committee's (the CCA) complaint against Vuma, namely format and local content violations. A copy of ICASA's approval of the licence amendments is attached.
4. We propose that given the approval of the amendments to the Vuma licence, the ability of Vuma to comply with **all** (our emphasis) regulatory obligations and licence conditions is now assured. Consequently, the parties are *at idem* as to the fact of past violations on the part of Vuma, and the reasons therefor, and the need to avoid these re-occurring.

5. We propose that the complainant and respondent agree to the following which, with the CCC's approval, can be made an order of the CCC:

5.1 Ad Charge Sheet paragraph 2.1: Violation of Clause 4 of the Vuma Licence:

5.1.1 Clause 4 of Vuma FM licence provided for the Licensee to broadcast "*broadcasting programming that is exclusively and predominantly gospel music led*".

5.1.2 Respondent conceded that it failed to broadcast gospel music exclusively or as a majority of music broadcast.

5.1.3 Mitigating factors:

5.1.3.1 The CCA recognises that the licence condition does not make sense as it is clear that a licensee cannot play a particular genre "exclusively and predominantly".

5.1.3.2 The CCA recognises that the licensee made application to ICASA for an amendment to clause 4 to clarify the licensee's obligations in relation to the genre issue which application was approved. Consequently, the licence condition now reads:

4.1 The Licensee shall have a format that is 60% music and 40% talk.

4.2 Of the music broadcast, more than 50% of the music featured on the music playlist shall be gospel.

4.3 Of the talk broadcast, a minimum of 15 hours a week shall be gospel/spiritual related.

5.1.4 Conclusion: The licensee confirms that it has been complying with its genre requirements since the licence amendment came into force and will be able to continue to do so.

5.2 Ad Charge Sheet paragraph 2.2: Violation of Clause 5 of the Vuma Licence:

5.2.1 Clause 5 of Vuma FM licence provided for the Licensee to broadcast 50% South African music.

5.2.2 Respondent conceded that it failed to broadcast 50% South African music for the period 2015-2019.

5.2.3 Mitigating factors:

5.2.3.1 The CCA recognises that the licence condition was particularly onerous for a commercial station with a narrow genre, namely, gospel.

5.2.3.2 The CCA recognises that the licensee made application to ICASA for an amendment to clause 5 to reduce its SA music obligation to 40% of music broadcast, which application was approved. Consequently, the licence condition now reads, in its relevant part: 40% of the music broadcast shall be South African music.

5.2.4 Conclusion: The licensee confirms that it has been complying with its SA music obligations since the licence amendment came into force and will be able to continue to do so.

5.3 Ad Charge Sheet paragraph 2.3: Violation of Clause 6.3 of the Vuma Licence:

5.3.1 Clause 6.3 of Vuma FM licence sets out the news obligations of the Licensee.

5.3.2 Respondent conceded that it failed to comply with these obligations for the period 2016-2019.

5.3.3 Mitigating factors:

5.3.3.1 The wording of the licence condition is ambiguous. It reads: the Licensee shall broadcast news on a regular basis, a total of fifty-two (52) minutes each week-day and twenty-four (24) minutes on weekends between 05h00 and 23h00.

5.3.3.2 The Respondent assumed that the phrase “twenty-four (24) minutes on weekends” was cumulative that is 24 minutes of news was required over both days of the weekend and not on each day of the weekend (our emphasis).

5.3.3.3 Indeed the fact that the CCA interpreted this section differently was only made clear to the Respondent as a result of the CCC complaint process.

5.3.4 Conclusion: The Respondent has confirmed that it has immediately put in place an action plan to increase the news bulletins to broadcast 24 minutes of news on each of the days of the weekend, namely Saturday and Sunday, by broadcasting six bulletins of four minutes each (at 07h00, 08h00, 09h00, 11h00, 12h00 and 13h00) and so will be able to comply with the now-clarified news obligations in its licence with effect from 19 June 2021.

5.4 Ad Charge Sheet paragraph 2.4: Violation of Clause 8.2 of the Vuma Licence:

5.4.1 Clause 8.2 of Vuma FM licence provides for the Licensee to employ a local news team for the production of local news.

- 5.4.2 Respondent reiterates that it has indeed always employed a local news team but it conceded that it had failed to provide ICASA with information regarding its local news team for the period 2017-2019.
- 5.4.3 Conclusion: The CCA confirms that the Licensee has recently begun reporting properly on its local news team and the Licensee confirms that it will be able to continue to do so.
- 5.5 Ad Charge Sheet paragraph 2.5: Violation of Clause 8.3 of the Vuma Licence:
- 5.5.1 Clause 8.3 of Vuma FM licence provides for the Licensee's staff complement to be 50% historically disadvantaged persons.
- 5.5.2 Respondent reiterates that it has always complied with this obligation but it conceded that it had failed to provide ICASA with information regarding the percentage of historically disadvantaged persons employed, for the period 2017-2019.
- 5.5.3 Conclusion: The CCA confirms that the Licensee has recently begun reporting properly on the numbers of historically disadvantaged persons in its staff complement and will be able to continue to do so.
- 5.6 Ad Charge Sheet paragraph 2.6: Violation of Clause 4(2)(b) of the Universal Service and Access Fund Regulations:
- 5.6.1 Clause 4(2)(b) of the USAAF Regs provides for a Licensee to make its USAAF contributions within six months of the end of the licensee's financial year.
- 5.6.2 Respondent concedes that it failed to make the payments timeously for the years: 2016/2017; 2017/18; 2018/19 and failed to advise ICASA in advance, of the reasons for the delays.
- 5.6.3 In mitigation:
- 5.6.3.1 The CCA is satisfied that the failures to make the payments timeously were inadvertent and were not deliberate.
- 5.6.3.2 The failures were a matter of days and weeks rather than a long period of default or a failure to pay at all.
- 5.6.4 Conclusion: The CCA confirms that the licensee has been complying with its USAAF obligations recently (as confirmed in its 2019/20 ACR) and is satisfied that it will be able to continue to do so.

5.7 Ad Charge Sheet paragraph 2.7: Violation of Clauses 7(a) and (b) of the General Licence Fees Regulations:

5.7.1 Clauses 7(a) and (b) of the Licence Fees Regs provides for a Licensee to make its USAAF contributions within six months of the end of the licensee's financial year.

5.7.2 Respondent concedes that it failed to make the payments timeously for the years: 2016/2017; 2017/18; 2018/19 and failed to advise ICASA in advance, of the reasons for the delays.

5.7.3 In mitigation:

5.7.3.1 The CCA is satisfied that the failures to make the payments timeously were inadvertent and were not deliberate.

5.7.3.2 The failures were a matter of days and weeks rather than a long period of default or a failure to pay at all.

5.7.4 Conclusion: The CCA confirms that the licensee has been complying with its licence fees obligations recently (as confirmed in its 2019/20 ACR) and is satisfied that it will be able to continue to do so.

6. Overall Arguments in Mitigation of the Imposition of Financial Penalties:

6.1 The Respondent has explained there had been a number of staff changes at the station and that certain handover processes were compromised which resulted in poor compliance and/or poor compliance reporting, on its part.

6.2 The Respondent remains subject to significant financial constraints. Since being licensed in 2012 it has never managed to cover its costs from operational earnings.

6.3 The Respondent's current station manager was brought in with a particular focus to try to bring the station to profitability and in doing so, compliance and reporting-related issues were delegated to a former staff member who simply failed to prioritize these issues, unbeknownst to the station manager. The failures in this regard have been duly acknowledged and rectified and compliance is now undertaken by the station manager's office. The CCA acknowledges that the station's current reporting and compliance practices have improved significantly.

6.4 The CCA does not support the imposition of any financial penalties in respect of the Respondent's non-compliance as this would only further imperil the station's financial position which would undermine its ability to engage in compliance and reporting activities and indeed would threaten its sustainability.

6.5 The CCA concedes that there were reporting failures of its own which contributed to the station's lack of responsiveness in respect of compliance reporting and adherence. In this regard, the CCA concedes that all but one of the Respondent's Annual Compliance Reports that are the subject of the CCC complaint were provided to the Respondent and uploaded onto the ICASA website on an extremely delayed basis. However, the Respondent concedes that it failed to enquire about the whereabouts of its annual compliance reports from ICASA which also contributed to it failing to receive same timeously.

6.6 Lastly the CCA is of the view that the recent amendments to the Respondent's licence will undoubtedly assist the Respondent with compliance now that the genre requirements have been clarified and the SA music content obligation lowered to 40%.

7. Conclusion:

In the result, the Respondent and the CCA are of the view that the CCC ought to order the Respondent, in terms of section 17E 2(a) of the ICASA Act, to cease and desist from any further contraventions of applicable regulations and of its licence conditions.

We trust that you find the above to be in order. Please do not hesitate to contact us should you have any queries or require any further information.

Yours sincerely,



Justine Limpitlaw

Supported by:



Busisiwe Mashigo