



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 17 FEBRUARY 2025

CASE NO: 485/2024

LICENSING AND COMPLIANCE DIVISION

COMPLAINANT

V

**SABC (MOTSWEDING FM)(THOBELA FM)
(LIGWALAGWALA FM)(LOTUS FM)
(GOOD HOPE FM))**

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Mushi/Sithole - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - Member

FROM THE OFFICE OF THE CCC:

Meera Lalla – Acting CCC Coordinator
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Ms. Busisiwe Mashigo

For the Respondent - Mr Muziwakhe Ngozo from the SABC legal services

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is an election matter referred to the CCC in terms of section 17 of the ICASA Act of 2000, to investigate allegations of non compliance with the National and Provincial Elections Broadcasts and Political Advertisements amendment Regulations, 2024.

THE PARTIES

- [2] The Complainant is the Licensing and Compliance Divisions of ICASA, (LCD).
- [3] The Respondent is the South African Broadcasting Corporation (SABC), a public broadcaster with nineteen radio stations and six television broadcast services in its stable. This matter concerns five of its radio stations.

THE COMPLAINT

- [4] The above matter was referred to the CCC following
- 4.1 Allegations of Contravention of National and Provincial Elections Broadcasts and Political Advertisements Amendment Regulations, 2024 ("Elections Regulations 2024"), by the SABC sound broadcasting services. Five of its radio stations allegedly failed to comply with various regulations detailed below.
- 4.2 The Licensee had, allegedly, through its five radio stations, during the election period, contravened regulations 4(14) (a); 4(14) (b); 4(14)(d); regulation 4(16); regulation 4(17) and regulation 6(11) of the above mentioned Election Regulations 2024.

SUMMARY OF COMPLAINT

[5] MOTSWEDING FM'S ALLEGED CONTRAVENTIONS

First Non Compliance

5.1 Regulation 6(11), which provides that "(11) A BSL must not broadcast a PA immediately before or after another PA or PEB."

5.2 It was alleged that Motsweding FM did not comply with the regulation above as set out in **Table 1**.

[6] The details of the non compliance as outlined in **Table 1** are as follows:

6.1 On 23 May 2024 at 07:21:53, Motsweding FM **broadcast a Democratic Alliance PA immediately before another Democratic Alliance PA.**

6.2 On 23 May 2024 at 07:22:24, Motsweding FM **broadcast a Democratic Alliance PA immediately after another Democratic Alliance PA.**

Second Non Compliance

[7] Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

7.1 It was alleged that Motsweding FM failed to comply with the above regulation as set out in **Table 2** below:

[8] **Table 2** reflects the following:

8.1 On 9 May 2024 at 11:10:55, Motsweding FM **broadcast the African National Congress PEB when a Democratic Alliance PEB was scheduled.** This was inconsistent with the prescribed sequence and timing set by the Authority.

8.2 On 9 May 2024 at 11:24:37, Motswedding FM **broadcast an African National Congress PEB when a Democratic Alliance PEB was scheduled**. This was inconsistent with the sequence and timing prescribed by the Authority.

THOBELA FM'S ALLEGED CONTRAVENTIONS

First Non Compliance

[9] Regulation 4(17) stipulates that:

"A Broadcasting Service Licensee must not broadcast a PEB immediately before or after another PEB or immediately before or after a PA."

[10] Thobela FM allegedly did not comply with the regulation above as set out in **Table 3**

[11] The details of **Table 3** are as follows:

11.1 On 27 April 2024 at 16:20:55, Thobela FM **broadcast a Pan Africanist Congress of Azania (PAC) PEB immediately before another PEB.**

11.2 On 27 April 2024 at 16:21:54, Thobela FM **broadcast a Rise Mzansi PEB immediately after another PEB.**

Second Non Compliance

[12] Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations ."

[13] Thobela FM allegedly did not comply with the regulation above as set out in **Table 4** thus:

13.1 On 29 April 2024 at 09:15:46, Thobela FM **broadcast a Pan Africanist Congress of Azania PEB instead of the scheduled Action SA PEB**, in a manner inconsistent with the prescribed sequence and timing set by the Authority.

13.2 On 2 May 2024 at 20:33:42, Thobela FM **broadcast a Vrybeidsfront Plus PEB when none was scheduled at the time.** This was inconsistent with the prescribed sequence and timing set by the Authority.

13.3 On 4 May 2024 at 10:05:43, Thobela FM **broadcast a Pan Africanist Congress of Azania PEB in a manner that was inconsistent with the prescribed sequence and timing set by the Authority.**

13.4 On 4 May 2024 at 10:47:25, Thobela FM **broadcast a Pan Africanist Congress of Azania when the scheduled PEB was for the Pan Africanist Congress PEB.**

[I pause to state that although from the above it seemed as if the Licensee complied with the schedule, **the explanation from the parties was that the Pan Africanist Congress was broadcast twice, instead of once, in one hour. This served to place the facts in perspective].**

LIGWALAGWALA FM'S ALLEGED CONTRAVENTION

(Not a first offender)

[14] Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

[15] It was alleged that Ligwalagwala FM failed to comply with the regulation as set out in **Table 5** below:

15.1 On 16 May 2024 at 14:13:45, Ligwalagwala FM **broadcast an Economic Freedom Fighters (EFF) PEB when the PEB scheduled was for Economic Liberators Forum South Africa.** This was inconsistent with the prescribed sequence and timing set by the Authority in terms of the Regulations.

LOTUS FM'S ALLEGED CONTRAVENTIONS

First Non Compliance

4(14) (b) was withdrawn

[13] Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the prescribed sequence and timing prescribed by the Authority in terms of these Regulations".

[14] It was alleged that Lotus FM did not comply with the regulation above as set out in **Table 6** below:

14.1 On 11 May 2024 at 14:24:40, Lotus FM **broadcast an Economic Freedom Fighters PEB instead of the scheduled Economic Liberators Forum SA PEB**. This was inconsistent with the prescribed sequence and timing set by the Authority.

14.2 On 12 May 2024 at 08:25:12, Lotus FM **broadcast an Economic Freedom Fighters PEB when the scheduled PEB was for Economic Liberators Forum South Africa**. This was inconsistent with the prescribed sequence and timing set by the Authority.

14.3 On 12 May 2024 at 09:24:35, Lotus FM **broadcast an Economic Freedom Fighters PEB when the PEB scheduled was for the Economic Liberators Forum South Africa**. This was inconsistent with the prescribed sequence and timing set by the Authority.

14.4 On 14 May 2024 at 14:24:55, Lotus FM **broadcast a Sizwe Ummah Nation PEB when the PEB scheduled was for the African Christian Democratic Party**. This was inconsistent with the prescribed sequence and timing set by the Authority.

14.5 On 19 May 2024 at 10:20:59, Lotus FM **broadcast an Economic Freedom Fighters PEB when the PEB scheduled was for the Economic Liberators Forum South Africa**. This was inconsistent with the prescribed

sequence and timing set by the Authority.

14.6 On 22 May 2024 at 10:30:24, Lotus FM **broadcast an Economic Freedom Fighters PEB when the PEB scheduled at the time was for the Economic Liberators Forum South Africa**. This was inconsistent with the prescribed sequence and timing set by the Authority.

14.7 On 23 May 2024 at 10:30:55, Lotus FM **broadcast an Economic Freedom Fighters PEB when the PEB scheduled was for the Economic Liberators Forum South Africa**. This was inconsistent with the prescribed sequence and timing set by the Authority.

Second Non Compliance

[15] Regulation 4(14)(d) provides that:

"A Broadcasting Service Licensee that broadcasts a PEB must ensure that all the PEB broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer."

[16] It was alleged that Lotus failed to comply with this regulation as set out in **Table 7** below:

16.1 On 1 May 2024, at 19:25:08, Lotus FM **broadcast a Vryheidsfront Plus PEB without a tail disclaimer**.

Third Non Compliance

[17] Regulation 4(17) stipulates that:

"A Broadcasting Service Licensee must not broadcast a PEB immediately before or after another PEB or immediately before or after PA."

[18] It was alleged that Lotus FM failed to comply with the regulation as set out in **Table 8** below:

18.1 On 11 May 2024 at 09:23:31, Lotus FM **broadcast a Democratic Alliance PEB immediately after a PA**.

- 18.2 On 12 May 2024 at 09:24:35, Lotus **FM broadcast an Economic Freedom Fighters PEB immediately after a PA.**
- 18.3 On 16 May 2024 at 07:22:05, Lotus FM **broadcast an Action SA PEB immediately after a PA.**
- 18.4 On 17 May 2024 at 09:26:14, Lotus FM **broadcast an Action SA PEB immediately after a PA.**
- 18.5 On 23 May 2024 at 17:07:55, Lotus FM **broadcast an Arise South Africa (ASA) PEB immediately after a PA.**
- 18.6 On 24 May 2024 at 17:18:01, Lotus FM **broadcast a Vryheidsfront Plus PEB immediately after a PA.**

Fourth Non Compliance

(The Charge was withdrawn)

[19] Regulation 4(14)(a), as amended, which stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must make available, every day, throughout the election period, twelve slots of forty (40) seconds each for the broadcast of PEB, excluding the tail disclaimer."

[20] Lotus FM allegedly did not comply with this regulation above as set out in **Table 9** below:

- 20.1 On 25 May 2024 at 07:12:10, Lotus FM **broadcast a Pan African Congress PEB for over 40 seconds.**

[It is important to note that since the charge was withdrawn it was automatically removed from the list of the charges before the CCC].

Fifth Non Compliance

[21] Regulation 6(11), which provides that:

"(11) A BSL must not broadcast a PA immediately before or after another PA or PEB".

[22] It was alleged that Lotus FM failed to comply with the regulation above as set out in **Table 10** below:

22.1 On 11 May 2024 at 09:22:50, Lotus FM **broadcast a DA PA immediately before a DA PEB.**

22.2 On 12 May 2024 at 09:23:55, Lotus FM **broadcast a DA PA immediately before an EFF PEB.**

22.3 On 16 May 2024 at 07:21:24, Lotus FM **broadcast a DA PA immediately before an Action SA PEB.**

22.4 On 17 May 2024 at 09:25:34, Lotus FM **broadcast a DA PA immediately before an Action SA PEB.**

22.5 On 23 May 2024 at 17:07:27, Lotus FM **broadcast an African Movement PA immediately before an Arise South Africa PEB.**

22.6 On 24 May 2024 at 17:17:31, Lotus FM **broadcast an African Movement Congress PA immediately before a Vryheidsfront Plus PEB.**

GOODHOPE FM'S ALLEGED CONTRAVENTIONS

First Non Compliance

[23] Regulation 4(14)(b), which provides that:

"A broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

[24] It was alleged that GoodHope FM failed to comply with the regulations above as set out in **Table 11** below:

24.1 On 26 April 2024 at 15:59:22, GoodHope FM **broadcast a Democratic Alliance PEB when there was no PEB scheduled at the time.**

Within the next hour, the PEB scheduled was for Action SA. This was inconsistent with the prescribed sequence and timing as prescribed by the Authority.

24.2 On 27 April 2024 at 10:23:22, GoodHope FM **broadcast a Democratic Alliance PEB when no PEB was scheduled at the time.** This was inconsistent with the sequence and timing prescribed by the Authority.

24.3 On 3 May 2024 at 17:48:43, GoodHope FM **broadcast an Inkatha Freedom Party PEB when a PEB scheduled was for the Vryheidsfront Plus.** This was inconsistent with the prescribed sequence and timing set by the Authority.

Second Non Compliance

[25] Regulation 4(14)(d) provides that:

"A Broadcasting Service Licensee that broadcasts a PEB must ensure that all PEB broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer."

[26] It was alleged that GoodHope FM failed to comply with the regulation above as set out in **Table 12** below:

26.1 On 15 May 2024 at 21:11:59, GoodHope FM **broadcast a Democratic Alliance PEB without a tail disclaimer.**

Third Non-Compliance

[27] Regulation 4(17) stipulates that:

"(11) A BSL must not broadcast a PA immediately before or after another PA or PEB."

[28] It was alleged that GoodHope failed to comply with the regulation as stated in **Table 13** below.

[29] **Table 13** reflects the following dates as dates on which the contraventions occurred:

29.1 14 May 2024 (twice) at various times;

29.2 15 May 2024 (twice) at various times;

29.3 18 May 2024 (three times) at various times;

29.4 20 May 2024 (three times) at various points; and

29.5 21 May 2024 (once) at 10:13:50, GoodHope broadcast a PA immediately after a PEB.

[30] Similarly it is alleged that on 22 May, 23 May (twice), and 25 May 2024, GoodHope broadcast a PA immediately after a PEB.

[31] In each case, the times recorded for the broadcast of a PA and times recorded for the broadcast of a PEB in **Table 13**, do not support the allegations. Because of the inconsistencies in Table 13, it became a challenge to make any determination regarding the validity of the allegations.

THE RESPONDENT'S RESPONSE

[32] The Respondent, admitted a number of contraventions, and disputed a few.

Those not admitted were eventually withdrawn by the Complainant.

32.1 The said contraventions are the following:

32.1.1 Charge Sheet dated 14 October 2024(Case No: 485/2024.

Details of Lotus FM's 4th non compliance

Regulation 4(14) (a), as amended, which states that:

"A Broadcasting Service Licensee that broadcasts a PEB must make available, every day, throughout the election broadcast period, twelve slots of forty (40) seconds each for the broadcast of PEB, excluding the tail disclaimer."

SABC's response was the following:

"25 May 2024: 07:12:10, The ICASA promo played right before the PEB. It was, therefore, erroneously alleged by ICASA that the PEB was longer than 40 seconds when it was not so."

The statement above was not contradicted. It follows that the alleged contravention therefore, was not proven.

32.1.2 GoodHope FM's 1st non compliance

Regulation 4(14) (b), which provides that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

SABC's response was to this effect:

"26 April 2024: DA was scheduled for the 11h00-12h00 slot but had the 2019 Election material allocated - after the DA advised the SABC of the error - the SABC slotted a PEB for the DA in the 15h00-16h00 slot, where there was no PEB slotted by ICASA, as corrective step. The Action SA PEB for 16h00-17h00 timeslot was broadcast as per schedule."

The above explanation was not gainsaid. In the absence of any contradiction to the statement by the Respondent, the non compliance above, the statement by the Respondent, stands and the charge was not proven.

AGGRAVATING FACTORS AND MITIGATING FACTORS

[33] While the Complainant made no submissions on aggravating factors, the Respondent made substantial submissions in mitigation. In this regard, the SABC submitted as follows:

[34] It viewed ICASA Regulations

"with the seriousness it deserves. In light of the importance of compliance and in preparation for the implementation phase of the elections project, the SABC rolled out multiple workshops for staff (management, producers, schedulers, on-air personalities and all relevant staff members) to drive awareness of the ICASA Election Regulations.

2.2 SABC also prepared a summarised version of frequently asked questions on the ICASA Election Regulations and the SABC Editorial Policies to assist in highlighting salient rules for the elections.

2.3 Training sessions were conducted to ensure that the responsible SABC employees were fully equipped to manage political advertisement bookings effectively. Despite all the above mentioned genuine efforts, there were errors from the booking and scheduling side".

[35] The SABC then attached a high-level process flow chart of how PEBs are managed within the SABC.

Pre-Planning & Training

[36] The SABC stated that it dedicated substantial time and resources to training staff involved in the PEB and PA booking and scheduling execution processes. This was done in a **bona fide** attempt to achieve full compliance.

- [37] According to the SABC, in preparation for the election period, the SABC engaged with ICASA as per section 57(2) of the Electronic Communications Act of 2005, which enjoins ICASA to take into account the programming and financial implications of the elections regulations in respect of the SABC's operations.
- [38] During this period, the SABC submitted preliminary representations on 15 June 2023 and 5 July 2023 respectively to ICASA where the SABC indicated that it had programming and financial challenges that it had experienced in the previous elections.
- [39] When ICASA published the Draft of the ICASA Elections Regulations for public comment and ran provincial workshops, the SABC supported and participated in these processes to ensure successful awareness of the prescripts of these regulations.
- [40] The SABC submitted representations to ICASA on 8 November 2023, and 17 November 2023 respectively, to highlight possible challenges that may arise during the implementation period.
- [41] Even after the publication of the final version of the ICASA Elections Regulations, SABC attended the ICASA workshop. The aim was that SABC staff should be fully equipped to handle elections challenges. In total, 14 workshops on the ICASA Elections Regulations were conducted for staff members from the Sales Division, Radio Division and Television Division.
- [42] In addition to the above mentioned efforts, the SABC offered to extend its elections broadcasts services to the GoodHope FM platform.
- [43] According to the SABC, Good Hope was the only commercial radio station that carried PEB's in the whole country. This, according to the SABC, was an indication that the SABC was committed to coverage of the elections broadcasts, as it was in the public interest to do so.
- [44] The SABC pleaded for leniency *"because the coverage of elections has proven to be a challenging task to execute."*

Management of PEBs & Contraventions

- [45] During the 2024 National Elections, the SABC was required to schedule 5 952 PEBs as per the ICASA schedule. However, certain PEBs were not scheduled due to the unavailability of material from specific political parties.
- [46] In addition to the PEBs, the SABC also managed 4 240 PA from political parties and independent candidates during the elections period. The SABC, therefore, managed close to 10 000 political adverts during the 2024 National and Provincial Elections.

Root Cause of the Contravention

- [47] The challenges which led to the above contraventions are outlined below.
- [48] The SABC repeatedly emphasised that it placed great importance on compliance with ICASA's regulatory prescripts related to coverage of political advertising and political election broadcasts in accordance with the ICASA Election Regulations.

Resource Capacity and Quality

- [49] According to the SABC, it faced serious challenges during the election period. Following a series of resignations, early retirements and staff transfers - further compounded by the section 189 process implemented in 2021 - the Airtime Management Team (Bookings/Scheduling) experienced a significant reduction in resources. The SABC effectively found itself bleeding the necessary talent and resources during this process.
- [50] As a result, fewer experienced personnel were available to manage the high volume of bookings during the 2024 National Elections period. The combination of increased workload and reduced capacity negatively impacted the overall quality and efficiency of the booking process.
- [51] Furthermore the SABC changed its broadcast monitoring service provider in May 2024, during the National Elections. This led to an extended onboarding process and delays in identifying broadcast discrepancies.

- [52] The number of staff responsible for managing all advertising campaigns, including those responsible for flighting advertisements were inexperienced.
- [53] From the facts, it seems to me that the defence raised by the Respondent is woefully inadequate. I say this because some of the shortcomings of the Respondent which led to the contraventions were self inflicted.
- [54] Just before the National and Provincial elections were held, the Respondent decided to make major changes to its systems. This, in turn, negatively affected the smooth running of the election coverage, which eventually led to the contraventions.
- [55] In its own words: "*The number of staff responsible for managing all advertising campaigns ... were inexperienced.*"
- [56] The shortage of experienced staff may have been partly beyond the control of the SABC, however, the section 189 process that the SABC initiated and implemented, certainly had a far reaching impact on the performance of its radio stations. The so-called mitigating factors provided by the Respondent, therefore, only serve to aggravate the situation.

DISCUSSION AND ANALYSIS OF THE FACTS

The Appropriateness of a Public Apology.

- [57] A question arose whether it would still make sense to require the stations to make a public apology seeing there was a delay in issuing the order. After some debate it was resolved that issuing a public apology was not only proper but also imperative.
- [58] First, the delay was beyond the control of the CCC, as there was a need for more information before a just decision could be taken.
- [59] Second, it is important that Licensees should be held accountable for their actions. Not ordering the station to make a public apology, because of the passage of time, would be to undermine the principle of accountability and to set a bad precedent.

[60] Last, a public apology recognises the importance of involving listeners in the punitive process and serves to restore confidence in the regulatory system.

[61] A public apology by a Licensee is inextricably linked to other forms of punishment. It can never be too late to impose a fine on a Licensee. Similarly, it can never be too late to order a Licensee to make a public apology.

The Nature And Seriousness of the Non-Compliances

[62] Non compliances of regulations in election matters are always serious. This is because Broadcasting Service Licensees have an important role to play in informing, educating and entertaining the public. At the same time, Licensees have a duty to uphold the principles of fairness, accuracy, and accessibility. It follows, therefore, that inaccurate information does not bode well for the integrity of a broadcaster.

Consequences of the Non Compliances

[63] The CCC cannot say with certainty what the consequences of the non compliances are as it has neither the capacity nor the resources to identify and measure the consequences of the non compliances in this matter. Suffice it to state generally that, in all election matters, failure to comply with Regulations is likely to have an adverse impact not only in the environment in which the Licensee operates, but may also undermine the integrity of the election process.

Circumstances Under Which The Non compliances Occurred

[64] The Respondent shared a list of challenges that it experienced during the election period which, in some measure, contributed to its poor performance leading to the contraventions of the Regulations.

[65] Among these, it counted resignations, as well staff transfers and early retirements, which happened just before the elections. Added to this was the section 189 process, which the Respondent introduced and implemented about three years earlier.

[66] When the elections arrived, they found a vulnerable Licensee, manned by inexperienced staff, who, *inter alia*, were ill equipped to handle huge volumes (about 10 000 or so) Political Advertisements and Party Election Broadcasts.

Steps Taken By The Respondent To Remedy The Non Compliances

[67] No steps were taken to remedy the non compliances. This is not surprising as the Respondent was not aware that it had contravened any regulations, until the Complainant brought the fact to its attention.

[68] In cases of this nature, a question always arises as to whether the Respondent has any monitoring measures in place and their effectiveness.

[69] In the present case, no mention was made of any monitoring mechanisms and the role they played, if any, during the election period.

[70] The Respondent went to great lengths to show how its staff members were trained and attended workshops in preparation for the elections, but nothing, of substance, was said concerning the efficiency and effectiveness of monitoring measures and other similar procedures. This fact alone might be an indication that existing measures are ineffective.

[71] What we do know is that the SABC changed its broadcast monitoring service provider in May 2024, during the National Elections. This led to an extended onboarding process and delays in identifying broadcast discrepancies.

[72] May 2024 was the middle of the election period. Changing the monitoring service provider at this stage, was a blunder - a serious error of judgment bordering on negligence. I say this because no serious broadcasting service licensee ("BSL") can function effectively without proper and reliable checks and balances during the election period.

[73] The Respondent, as a public broadcaster, has a duty to ensure that its systems are properly maintained and functioning well at all times. On the facts before the CCC, it is clear that the Respondent did not even have an opportunity to test the efficacy of the monitoring systems and/or performance of the new service provider. The Respondent, therefore, can only have itself to blame for the consequences that followed.

Steps Taken By the Respondent To Prevent Similar Non Compliances From Occurring In The Future

[74] No submissions were made in this regard. This seeming indifference is far from reassuring. Hopefully, however, the Respondent has learned its lesson the hard way, and, in future, will be hesitant to take steps or implement decisions that might affect its performance as a broadcaster, during the election period.

FINDING

[75] Having regard to the totality of the facts, the CCC concludes as set out hereunder:

MOTSWEDING FM

75.1 In respect of Motsweding FM the following finding is made:

75.1.1 First Non Compliance: i.e. Regulation 6(11), which provides that

"(11) A BSL must not exceed broadcast a PA immediately before or after another PA or PEB."

(a) Motsweding FM failed to comply with the above Regulation in that on 23 May 2024 at 07:21:53, Motsweding FM **broadcast a PA immediately before another PA.**

(b) Again on 23 May 2024 at 07:22:24, Motsweding FM **broadcast a PA immediately after another PA.**

75.1.2 Second Non Compliance: i.e. Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

in that Motsweding FM failed to comply with the regulation above in that twice, on 9 May 2024, at the times set out on the charge sheet, the station

broadcast a PEB when a different PEB was scheduled. This was inconsistent with the prescribed sequence and timing set by the Authority.

[76] Other mitigating factors were found to be the following:

Motsweding FM has a clean record. In addition, it had only two charges filed against it.

THOBELA FM

[77] In respect of Thobela FM the following finding is made:

77.1 First Non Compliance: i.e. Regulation 4(17) which stipulates that:

"A Broadcasting Service Licensee must not broadcast a PEB immediately before or after another PEB or immediately before or after a PA."

(a) Thobela FM failed to comply with the above regulation in that, twice, on 27 April 2024, at the times set out in the charge sheet, the station broadcast a PEB before another PEB and immediately after another PEB.

77.2 Second Non Compliance: i.e. Regulation 4(14)(b) stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations ."

(b) Thobela FM failed to comply with the above regulations in that the station, on the 29 April 2024, the 2 May 2024 and two times on the 4 May 2024, at the times set out on the charge sheet, the station broadcast PEBs in a manner that was inconsistent with the sequence and timing prescribed by the Authority.

LIGWALAGWALA FM

[78] In respect of Ligwalagwala FM the following finding is made:

79.1 First Non-Compliance: i.e. Regulation 4(14)(b) which stipulates that:

"A Broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

- (a) Ligwalagwala FM failed to comply with the above Regulation in that on 16 May 2024 at 14.13.45, the station broadcast a PEB, for a particular political party, when the schedule was for a different political party. This was inconsistent with the sequence and timing prescribed by the Authority.

LOTUS FM

[80] In respect of Lotus FM, out the 5 non compliances that the station was charged with, the Complainant withdrew the first and the fourth alleged non compliances. This meant only 3 non compliances were left on the charge sheet.

[81] The CCC's finding on the three non compliances that remain, is set out hereunder:

- (a) Lotus FM failed to comply with the 2nd non compliance: i.e. Regulation 4(14)(d) which provides that:

"A Broadcasting Service Licensee that broadcasts a PEB must ensure that all the PEB broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer."

in that on 1 May 19:25:08, Lotus FM **broadcast a Vryheidsfront Plus PEB without a tail disclaimer.**

81.1 Third Non Compliance: i.e. Regulation 4(17) of the Regulations.

- (b) Lotus FM failed to comply with Regulation 4(17) which stipulates that:

"A Broadcasting Service Licensee must not broadcast a PEB immediately before or after another PEB or immediately before or after PA."

in that on 11 May 2024, 12 May 2024, 16 May 2024, 17 May 2024, 2 May 2024 and 24 May 2024, and at the times stated on the charge sheet, the station broadcast a PEB immediately after a PA.

81.2 Fifth Non Compliance: i.e. Regulation 6(11) of the Regulations

(c) Lotus failed to comply with regulation above which provides that:

"(11) A BSL must not broadcast a PA immediately before or after another PA or PEB ".in that on 11, 12, 16, 17, 23 and 24 May 2024, at the times stated on the charge sheet, Lotus FM broadcast a PA immediately before or after another PA or PEB.

(d) Second Non Compliance:

Regulation 4(14)(b) of the Regulations.

No finding was made as the charge was withdrawn.

(e) Fourth Non-Compliance:

Regulation 4(14)(a) of the Regulations.

No finding was made as the charge was withdrawn.

GOOD HOPE FM

[82] In respect of Good Hope FM, the following finding is made:

82.1 First Non Compliance: i.e. Regulation 4(14)(b), which provides that:

"A broadcasting Service Licensee that broadcasts a PEB must do so in accordance with the sequence and timing prescribed by the Authority in terms of these Regulations."

[83] It was alleged that Good Hope FM failed to comply with the regulation above on the 26, 27 April 2024 and on the 3 May 2024.

[84] This allegation was not proven. The SABC put up a valid defence which was not contradicted. In view of that, **no adverse finding could be made in respect of the first non compliance (Regulation 4(1)(b) of the Regulations).**

Second Non Compliance

[85] The CCC's finding is that Good Hope failed to comply with Regulation 4(14)(d) which provides that:

"A Broadcasting Service Licensee that broadcasts a PEB must ensure that all PEB broadcasts are clearly identified through a standard pre-recorded concluding message (tail) disclaimer." In that on the 15 May 2024 at 21:11:59, Good Hope FM broadcast a PEB without a tail disclaimer.

[86] Third non compliance: i.e.

Regulation 4(17) which stipulates that:

"(11) A BSL must not broadcast a PA immediately before or after another PA or PEB."

[87] As stated earlier, the information provided to the CCC, was unsatisfactory in that the dates and times for the alleged non compliances did not match.

[88] In each case, the times recorded for the broadcast of a PA and times recorded for the broadcast of a PEB in **Table 13**, did not support the allegations. Because of the inconsistencies in Table 13, it was not possible to make any determination regarding the validity of the allegations.

[89] In view of the above, the CCC was, therefore, unable to make an adverse finding in respect of this charge. The charge, was therefore, dismissed.

SUMMARY

[90] Motsweding FM

is found to have contravened

1. Regulation 6(11), as outlined in **Table 1** (twice on 23 May 2024) and
2. Regulation 4(14)(b), as outlined in **Table 2** (twice on 9 May 2024).

[91] Thobela FM

is found to have contravened

1. Regulation 4(17), as outlined in **Table 3**, (twice on 27 April 2024) and
2. Regulation 4(14)(b), as outlined in **Table 4**, on 29 April 2024, 2 May 2024 and twice on 4 May 2024).

[92] Ligwalagwala FM

is found to have contravened

1. Regulation 4(14)(b), as outlined in **Table 5**, once on 16 May 2024.

[93] Lotus FM

is found to have contravened

1. Regulation 4(14)(d), as outlined in Table 7, on 1 May 2024.
2. Regulation 4(17), as outlined in Table 8, on 11 May 2024, 12 May 2024, 16 May 2024, 17 May 2024, 23 May 2024 and 24 May 2024
3. Regulation 6(11) on 11, 12, 16, 17, 23 and 24 May 2024, at the times stated on the charge sheet.

[94] Good Hope FM

is found to have contravened

1. Regulation 4(14)(d), as outlined in **Table 12**, on 15 May 2024.

[95] On the other hand the following were dismissed:

- (a) Regulation 4(14)(b), as outlined in **Table 11**, on 26 April 2024, 27 April

2024 and 3 May 2024, and

- (b) Regulation 4(17), as reflected in **Table 13**, allegedly contravened on 14, 15, 18, 20, 21, 22, 23 and 25 May 2024. The basis of the dismissal was lack of consistency in the formulation of the charges.

CONCLUSION (SANCTION)

[96] Although the five stations, concerned in this matter, were found to have contravened different regulations, they were treated equally on the basis that the circumstances under which the contraventions occurred were the same. For that reason the same sanction for all the stations was warranted. Nevertheless, is it is only proper that, as a repeat offender, Ligwalagwala, received a different penalty.

RECOMMENDATIONS IN TERMS OF SECTION 17 E(2) OF THE ICASA ACT OF 2000.

ORDER

[97] In terms of Section 17E(2) of the ICASA Act the CCC recommends the following orders to be issued by the Authority, namely -

97.1 Direct the Licensee, through the five stations, to desist from any further contravention of the said regulations.

97.2 Direct the Licensee to take the following remedial actions:

97.2.1 that each station, namely— Motsweding FM, Thobela FM, Ligwalagwala FM, Lotus FM and GoodHope FM,

97.2.1.1 desist from further contraventions;

97.2.1.2 broadcasts a public apology during the first week after this order is issued.

The apology must be phrased thus:

"The Independent Communications Authority of South Africa has found that this station was negligent in not having abided by the National and

Provincial Elections Regulations 2024.

This station failed to comply with regulations concerning the broadcast of Political Advertisements. It also failed to broadcast Party Elections Broadcasts in accordance with the sequence and timing prescribed by the Authority.

The conduct of the station was

in conflict with the ICASA Election Regulations which require that Political Advertisements and Party Election Broadcasts be broadcasts in terms of the Regulations. This station further extends its apology to ICASA and to its listeners for having committed these contraventions”.

[98] **In respect of Motsweding FM** the apology is to be broadcast, in Setswana, once per day, for five consecutive days, as its first item on its news service between 7h00 and 20.10.

98.1 On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the LCD of ICASA at the latest 48 hours before the broadcast.

98.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his or her representative, who must declare on air that he or she is the station manager or acting on behalf of the Station Manager.

[99] **In respect of Thobela FM**, the apology is to be broadcast, in Sepedi, once per day, for five consecutive days, as its first item on its news service between 7h00 and 20:10.

99.1 On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest 48 hours before the broadcast.

99.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her representative, who must declare that he/she is the Station Manager or

acting on behalf of the Station Manager.

[100] **In respect of Ligwalagwala FM**, the apology is to be broadcast in isiSwati, once a day, for five consecutive days as its first item on its news service between 7h00 and 20:10.

100.1 On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest 48 hours before the broadcast.

100.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

[101] **In respect of Lotus FM**, the apology is to be broadcast in English, once a day, for five consecutive days as its first item on its news service between 7h00 and 20:10

101.1 On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest 48 hours before the broadcast.

101.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

[102] **In respect of Good Hope FM**, the apology is to be broadcast in English and Afrikaans, once a day, for five consecutive days as its first item on its news service between 7h00 and 20:10.

[102.1 On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of ICASA at the latest 48 hours before the broadcast.

102.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her

representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

- [103] In respect of all five stations, an electronic copy of each broadcast stating the date and the time of the broadcast, must be sent to the LCD at ICASA by email within 48 hours from the last broadcast in the said five days.
- [104] **In respect of Motswedding FM, Thobela FM, Lotus FM and Good Hope FM,** a fine of R50000 (Fifty Thousand Rand) is recommended for each individual station. R30000 (Thirty Thousand Rand) of this amount, for each individual station, is suspended until after the next National and Provincial Elections. The remainder, which is R20000 (Twenty Thousand Rand) must be paid to ICASA, for each individual station, within 90 calendar days from when this judgment is issued. The total amount for all four stations is R200000 (Two Hundred Thousand Rand). Of the total amount, R120000 is suspended until after the next National and Provincial Elections. The remainder of the total amount, which is R80000 (Eighty Thousand Rand) must be paid to ICASA, for all four stations, within 90 calendar days from when this judgment is issued.
- [105] **In respect of Ligwalagwala FM,** which is not a first offender, a fine of R60000 is recommended. R20000 is suspended until after the next National and Provincial Elections. The remainder, that is R40000, must be paid to ICASA within 90 calendar days from when this judgment is issued.
- [106] The CEO of ICASA or his nominee must be copied, with proof of payment, within 24 hours from when the payment was made.

TMMasipa

Date: 25 August 2025

Judge Thokozile Masipa
Chairperson of the CCC