



Independent Communications Authority of South Africa

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

COUNCIL DECISIONS– 30 July 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Confiscated Equipment of Mogale FM, and its failure to comply with CCC recommendations</p> <p>The purpose of the submission was to request that Council approve the recommendation for criminal charges be laid against Mogale FM for failing to comply with an ICASA decision, and not to allow the return of confiscated radio equipment of Mogale FM.</p> <p>1.1 Gauteng Region referred Mogale FM to the CCC due to their non-compliance with its licence terms and conditions. The hearing began on the 6th of November 2017, and ended on the 8th of February 2018.</p> <p>1.2 The Gauteng inspectorate filed the following charges against Mogale FM:</p> <p>1.2.1 Charge 1 - Mogale FM violated the terms and conditions of its spectrum licence as stipulated in Schedule B2 of the licence, by operating on 253W Output power and a two-stack dipole antenna (which adds 6dBs to</p>	<p>The recommendation was deferred, subject to further review of the submission.</p>

	<p>their ERP) on their transmitting equipment while licensed to operate on 80 W ERP (253W-80W = 173W excess) at the angle of 250 C, the station is broadcasting on 360 C. This was in violation of section 33(1)(a) of the Electronic Communications Act No. 36 of 2005;</p> <p>1.2.2 Charge 2 - Mogale FM is self-providing a broadcasting signal using Sound Fusion Media as their signal distributor. This was done without a valid Electronic Communications Network Services license (ECNS). This is a contravention in terms of section 63(1) of the ECA;</p> <p>1.2.3 Charge 3 - Mogale FM is operating at a location (Kagiso Water Towers) that was not approved by the Authority. Thus, contravening the terms and conditions of its technical specifications, of Schedule B2 of its spectrum license (approved location Helderkruin High site); and</p> <p>1.2.4 Charge 4 - Despite numerous inspectors' notices, Mogale FM failed to comply with reducing the output power, apply for an ECNS licence, and to move back their transmitters to the licensed location, which is Helderkruin High Site.</p> <p>1.3 The CCC made the following recommendations to Council: Mogale FM be ordered to desist from the following conduct:</p> <p>1.3.1 Contravening the terms and conditions of its spectrum</p>	
--	--	--

	<p>licence as stipulated in Schedule B2 (of the licence), by operating on 253W Output power and a two-stack dipole antenna (which adds 6dBs to their ERP) on their transmitting equipment while licensed to operate on 80 W ERP (253W-80W = 173W excess) at the angle of 250 C.</p> <p>1.3.2 Self-providing a broadcasting signal without an ECNS or ECN licence.</p> <p>1.3.3 Distributing a signal from a transmitter site that was not approved by the Authority in its broadcasting licence.</p> <p>1.3.4 The order in 1.3.1 be met before midnight on the day after the day on which this judgment is published.</p> <p>1.3.5 That the order in 1.3.2 and 1.3.3 be met within twenty-one calendar days from the day after the date that this judgment is published.</p> <p>1.3.6 That a fine of R50 000 (Fifty thousand Rand) be imposed on the licensee, and the fine be payable to ICASA within 60 calendar days from the date that this judgment is published.</p>	
1.4	On the 21st of June 2018, the inspectorate in the Gauteng region seized broadcasting equipment and transmission equipment from Mogale FM, following the station's	

	<p>non-compliance with the CCC ruling.</p> <p>1.5 Mogale FM made a payment of R50 000 two years after the CCC ruling, which in essence is non-compliance with the stipulated period in the CCC ruling.</p> <p>1.6 Mogale FM made an application for the amendment of their spectrum licence to the Authority. This application was initially rejected because of possible cause of harmful radio frequency interference to other broadcasters. However, Mogale FM has subsequently been granted a licence on frequency 97.7FM, and the transmission site is now in Krugersdorp no longer in Helderkruijn.</p> <p>1.7 According to legal advice received, the Inspectorate lacks the authority to release confiscated equipment; thus, the equipment seized from Mogale FM can only be released by a court of law, and Mogale FM must apply to the court of law if they want the equipment returned to them.</p> <p>Recommendation to Council</p> <p>It was recommended that Council approve that:</p> <p>1.8 Regions recommends criminal proceedings against Mogale FM for contravening section 17H(1)(f) of the Independent Communications Authority of South Africa Act, 2000 in that it failed to comply with a decision made by the Authority.</p> <p>1.9 Accordingly, the confiscated radio equipment is not returned to the licensee as it will assist the relevant law enforcement agency to investigate the matter further.</p>	
--	---	--

2.	<p>Conditional Grant of exemption for Electronic Communications Service (ECS) and Electronic Communications Networks Service (ECNS) Licences</p> <p>The purpose of the submission was to request Council to note, and approve the conditional ECS/ECNS licence exemption to resell ECS/ECNS services obtained from a duly licensed service provider(s) in terms of Chapter 3 of the Electronic Communications Act No. 36 of 2005 ("ECA").</p> <p>2.1. In June 2021, Capitec Bank Limited and Euphoria Telecom (Pty) Ltd ("the Applicants") each submitted notices to the Authority to register Electronic Communications Service (ECS) licence exemptions.</p> <p>2.2. The applications were submitted in accordance with Regulation 13 of the Processes and Procedures Regulations published in Government Gazette No. 33297 of 14 June 2010, using the applicable Form M and the Regulation 3 of the Regulations regarding Licence Exempt Electronic Communications Network, Electronic Communications Networks Services and Electronic Communications Services in terms of Section 6 of the Electronic Communications Act, 2005 (Act No. 36 of 2005).</p> <p>2.3. Upon analysis of the two applications, it was identified that both applications were incomplete. Reseller agreements were not attached to the applications as</p>	<p>The recommendation was approved.</p>

	<p>required. Section 6(2)(b) of the ECA requires that a reseller agreement be attached to the application. Both applicants were requested to submit the outstanding documentations.</p> <p>2.4. In response to the Authority's request for submission of the outstanding reseller agreements, the applicants indicated that according to their interpretation. It is not required to submit the signed commercial agreement for purposes of an exemption application.</p> <p>2.5. As a result of several applicants are disputing the Authority's interpretation of section 6(2)(b) and the term of "reseller" in the ECA has been observed with considerable concern. A meeting was held between Regions, Licensing and Legal Divisions where it was resolved that:</p> <p>2.5.1 Licence exemption should be conditionally granted subject to submission of a reseller agreement; and</p> <p>2.5.2 Licensing Division to develop the Guidelines to address the challenges that are raised.</p> <p>Recommendation to Council</p> <p>It is recommended that Council notes, and approves the conditional ECS/ECNS licence exemption to resell ECS/ECNS services obtained from a duly licensed service provider(s) in terms of Chapter 3 of the Electronic Communications Act No. 36 of 2005 ("ECA").</p>	
3.	<p>AGA Council Committee Quarter 1 Report</p> <p>The purpose of the submission was to request Council to approve the Notice to</p>	<p>The recommendation was approved.</p>

	<p>hold public hearings on the Review of the Independent Broadcasting Authority (IBA) (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, Discussion Document for publication in the Government Gazette. The public hearings will be held on 14 July 2021.</p> <p>3.1. The Authority, in terms of Section 8 and Section 30 of the Postal Services Act No 124 of 1998 (the Act), approved the Accounting Separation Regulations for Reserved Postal Services (the Accounting Separation Regulations) for publication and implementation on 10 March 2011.</p> <p>3.2. The Authority published the Discussion Document on the Review of the Independent Broadcasting Authority (Advertising, Infomercials and Programme Sponsorship) Regulations, 1999, in Government Gazette No 44333 of 26 March 2021. The closing date for written submissions was 07 June 2021.</p> <p>3.3. The Authority received seven (7) written submissions from stakeholders: namely, eMedia Investments, MultiChoice, Media Monitoring Africa, NAB, Outsurance, SABC and SASFED. Four (4) stakeholders indicated that they are interested in making oral presentations at the public hearings.</p> <p>Recommendation to Council</p> <p>It is recommended that Council approve the Notice to hold public hearings on the Review of the IBA (Advertising, Infomercials and Programme Sponsorship) Regulations Discussion Document, for publication in the Government Gazette.</p>	
--	---	--

ISSUED BY: Secretariat Office
on behalf of Council