



## Independent Communications Authority of South Africa

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Centurion

### COUNCIL DECISIONS– 10 FEBRUARY 2021

ITEM NO.	AGENDA ITEM	DECISION
1.	<p><b>Sound Broadcasting Service Licence – Classic FM South Africa (Pty) Ltd</b></p> <p>The purpose of the submission was to provide Council with an analysis of an application for the transfer of control of the Individual Commercial Sound Broadcasting Service (I-CSBS) and Radio Frequency Spectrum (RFS) licences held by Classic FM South Africa (Pty) Ltd (the Applicant) from its current shareholders to new shareholders (the Transferees) and request that Council approves the transfer application.</p> <p>1.1. The Applicant holds both I-CSBS and RFS licences to provide a commercial sound broadcasting service in Johannesburg in the Gauteng Province. The I-CSBS licence was issued on 17 December 2008 and was amended on 11 May 2016, whilst the RFS Licence was issued on 12 December 2008. Both licences expired on 16 December 2018.</p> <p>1.2. The renewal applications for both licences were submitted by the Applicant on 13 June 2018. The Applicant has not been informed of the Authority's decision on its renewal application as there was a Complaints and Compliance Committee (CCC) matter raised by the Individual Licence Renewal Committee.</p>	<p><b>Council approved the application with regard to the change of ownership with an understanding that another submission would be brought before Council dealing with the aspects of amendments to the licence format.</b></p>

	<p>1.3. The applications for transfer of control were submitted subsequent to the Applicant having completed the business rescue process wherein the new shareholders bought the existing shares in the Applicant.</p> <p>1.4. In terms of the Application it was found that, the Applicant was compliant with its General Licence fees, the Applicant requested confidentiality on sections of its application in terms of 4(d) of the ICASA Act and it was granted subject to the legal vetting.</p> <p>1.5. There are three (3) new shareholders, and after verifications of the information submitted, it has been confirmed that the Applicant has the minimum 30% HDG stake compliance as provided for in the Act it would be 32.56% post approval.</p>	
2.	<p><b>Approval of Invitation to Apply (ITA) for Individual Commercial Sound Broadcasting Service Licence in the Northern Cape Province</b></p> <p>The purpose of the submission was for Council to approve the Invitation to Apply (ITA) for individual Commercial Sound Broadcasting Service Licence in the Northern Cape.</p> <p>2.1. The Authority resolved to re-issue the ITA in the 2020/21 Financial Year and included this as a deliverable in the Strategic Plan for the 2020/21 – 2024/25 Medium Term Strategic Framework (MTSF).</p> <p>2.2. Pursuant to the publication of the Position Paper, the Authority licensed three commercial sound broadcasting services in secondary markets of Mpumalanga, North West and Limpopo provinces in 2007.</p>	<b>The recommendation was approved by Council.</b>

3.	<p><b>Application for the transfer of Individual Electronic Communications Services(I-ECS) and Individual Electronic Communications Network Services(I-ECNS) Licences from Max Internet Technologies CC to Central Media Group(Pty) Ltd T/A OFM and accompanying vetted reasons document.</b></p> <p>The purpose of the submission was to recommend that Council approves the transfer of the I-ECS and I-ECNS from Max Internet Technologies cc (the Applicant) to Central Media Group (Pty) Ltd (the Transferee) and the vetted Reasons Document.</p> <p>3.1. The applications were received in terms of form G of the Process and Procedure Regulations.</p> <p>3.2. The Transfer Applications were accompanied by a request for confidentiality in terms of section 4D of the ICASA Act to which the Authority granted confidentiality in line with the provisions of section 4D.</p> <p>3.3. On 21 June 2019, the Authority published General Notice 333 in Government Gazette No. 42536 indicating that it has received the Transfer Applications and invited interested persons to make written representations to the Authority in relation to the Transfer Applications within fourteen (14) working days of the date of the publication of the notice in the Government Gazette.</p> <p>3.4. By the closing date for comments was on 10 July 2019, the Authority had not received any written representations in relation to the Transfer Applications.</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>3.5. The Authority elected not to hold public hearings as it was of the view that the applications were clear, and it did not receive any written representations from the public with respect to the applications.</p> <p>3.6. On 02 October 2019, the Applicant indicated that there had been changes to its shareholding and the contact details. The Authority requested the Applicant to submit the amendment in accordance with the Processes and Procedure regulations. The Applicant was further requested to indicate when the amendment occurred.</p> <p>3.7. 9.7 On 14 February 2020, the Applicant indicated that the amendment of its shareholding occurred on 12 March 2019. The amendment applications were accordingly considered by the Authority.</p>	
<b>4.</b>	<p><b>Voice Quality of Service Mpumalanga</b></p> <p>The purpose of the submission was for Council to approve the publication of the monitoring report for measurements conducted in Mpumalanga province during Quarter three (3).</p> <p>4.1. The revised Annual Performance Plan of Engineering &amp; Technology (E&amp;T) division sets out a target to conduct QoS monitoring by quarterly drive tests in four provinces; Gauteng, Free State, Mpumalanga and North West.</p> <p>4.2. The Authority conducted measurements in the Mpumalanga Province in the period 19 to 30 October 2020, covering a total</p>	<p><b>The recommendation was approved by Council.</b></p>

	<p>distance of over 1700 kilometres, targeting areas in Boschfontein, Mbombela, Acornhoek, Bushbuckridge and Hazyview. Bushbuckridge together with Acornhoek were monitored in the financial year 2014/2015. Mbombela was previously monitored in the financial year 2017/18.</p> <p>4.3. The purpose of the report was to assess the quality of Service provided by MNO's to subscribers as well as the quality of service perceived by subscribers.</p> <p>4.4. The networks targeted were Cell C, Vodacom, MTN and Telkom. The main Key Performance indicators which were measured for compliance with the 2016 End User and Subscriber Service Charter are:</p> <p>4.4.1 Drop Call Ratio which should be less than 3%;</p> <p>4.4.2 Call Setup Access Ratio of less than 98%; and</p> <p>4.4.3 Call Setup time.</p> <p>4.5. In terms of the measurement results, all the operators received less than 96% of accessibility. MTN and Vodacom call retainability was less than the required 3%, Cell C and Telkom did not achieve at all in that aspect.</p> <p>4.6. Based on the measurement results there was an improvement in the services offered to subscribers and it can be attributed to the high investment of infrastructure development.</p>	
<b>5.</b>	<b>Change and update of ICASA Licensee Information – Comsol (Pty) Ltd</b>	<b>The recommendation was approved by Council.</b>

	<p>The purpose of the submission was to advise Council of a notice from Comsol (Pty) Ltd (Comsol), requesting the Authority to effect changes to its shareholding.</p> <p>5.1. On 16 January 2009, the Authority granted and issued Comsol with an Individual Electronic Communications Network (I-ECNS) and an Individual Electronic Communications Network Service (I-ECNS) Licences with licence numbers 0198/IECN/JAN/2009 and 0198/IECS/JAN/2009.</p> <p>5.2. On 06 December 2019, the Authority received a notice from Comsol advising the Authority of changes with respect to its shareholding.</p> <p>5.3. Comsol indicated that the majority shareholder Convergence Partners (which previously held 41%), comprises of two shareholders (Convergence Partners Communications Infrastructure Fund (Mauritius) Ltd and Convergence Partners Investment (Pty) Ltd). The result is that, the majority shareholding still remains with those two shareholders holding the majority shareholding and therefore, control does not shift or change at all.</p> <p>5.4. ICASA's Compliance division certifies that there was no change of the control and there was no objection to the approval of the changing of shareholding in Comsol Pty Ltd, and the HDG ownership percentage stands at 51.7%.</p>	
<b>6.</b>	<b>Recommendation by CCC to Council in the matter between Tshepo Thafeng and</b>	<b>Council resolved to approve the recommendations of the CCC</b>

<p><b>Soweto Community Television (Soweto TV)</b></p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between Tshepo Thafeng and Soweto TV.</p> <p>6.1. On 29 November 2019, a complaint was lodged by Mr T Thafeng for the investigation by the CCC in terms of Section 17(b)(a) of the ICASA Act.</p> <p>6.2. The complaint emanated from the resignation of the Board members, except for one Mr Thuis Nkutha who remained as an Executive of the Licensee.</p> <p>6.3. Mr T Nkutha then approached ICASA seeking clarity on how to deal with the matter. ICASA's CCA division proposed that the remaining board member ensures that there was a general election to elect members of the board.</p> <p>6.4. The remaining Board member was to appoint an interim task team to assist with the preparation for the AGM and election process, for the board to be fully constituted in terms of Article 4 of the TV Stations Memorandum of Incorporation (MOI)</p> <p>6.5. The Complainant alleged that the board of Soweto TV is not properly constituted in terms of clause 5.1.1 of Soweto TV's MOI which states that, <i>"the board of directors of the company comprises of a minimum of three directors and alternate directors...."</i></p> <p>6.6. The Complainant further alleged that the community of Soweto and stakeholders were not involved in</p>	<p><b>subject to the AGM being chaired by an Advocate or Attorney appointed by the board and with the CEO's nominating an employee to act as secretariat for the AGM.</b></p>
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	<p>the election of the current board of directors of Soweto TV.</p> <p>6.7. The Complainant substantiated his allegation by pointing out the following irregularities:</p> <p>6.7.1 There was no AGM held, which was properly advertised inviting the community of Soweto.</p> <p>6.7.2 Their failure to hold an AGM, was a contravention of clause 4.2.3 of its licence terms and conditions.</p> <p>6.8. That the remaining Board Executive acted as sole director and elected Board Members, this being a contravention in terms 536 of the Stations MOI.</p> <p>6.9. That the audited financial statements were not presented at the AGM held on 29 of March 2019, which was in contravention with Clause 1.4.2 of the Stations MOI.</p> <p>The CCC made the following recommendations to Council:</p> <p>6.10. That within 60 working days from when the COVID restriction are lifted the CEO, as instructed by the Board, between the hours of 07:00-08:00 and 18:00-20:00, for twenty-one (21) calendar days advertises, on television and on its website that persons of 18 years and older who live within the broadcasting range (as per its license) of Soweto Television may apply for membership of the company so that</p>	
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	<p>they may elect a Board of Directors at a Special meeting of the company.</p> <p>6.11. That the advertisement must include that an application form must be filled in as set out on the Station's Website or as obtained from the Office of the radio station (with station's street address) or per email (with station's email address).</p> <p>6.12. That the CEO of the radio station must, if the applicant lives at a place as aforementioned, issue the said membership by notifying the applicant per email or postal service and stating that he or she must at the meeting, as set out hereunder, be in possession of the said proof of membership to enter the meeting place and vote.</p> <p>6.13. That the Board within 40 working days thereafter on a Saturday or a Sunday between the hours of 14:00 and 19:00, at a specified readily accessible place within the broadcasting range, hold a Special Members' meeting which is daily advertised for 21 days on television between the hours of 07:00-08:00 and 18:00 - 20:00.</p> <p>6.14. That as main item, a Board of Directors, including a Chair and Deputy Chair, of 8 be elected from the members by majority vote at such a meeting for a term of three years.</p> <p>6.15. That the election be chaired by a Senior Counsel (SC) appointed by the Board through an Attorney; with the CEO or his or her nominated employee acting as Secretary.</p>	
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<p><b>7.</b></p>	<p><b>South African Post Office(SAPO) Request to waive the 2019/2020 fees</b></p> <p>The purpose of the memo was to request Council to decline the request by South African Post Office SOC Limited 'SAPO' for a payment waiver for Reserved Postal Service Licence Fees for the 2019/20 financial year and request the Chairperson.</p> <p>7.1. The Covid-19 pandemic and subsequent lockdown has resulted in a slowdown in their business activities with extremely low revenue levels for the six months ending 30 September 2020.</p> <p>7.2. Consequently, it continues to experience revenue constraints, cost pressure and financial stress.</p> <p>7.3. It was recommended that Council decline South African Post Office SOC Limited 'SAPO' for a payment waiver for Reserved Postal Service Licence Fees for the 2019/20 based to the below reasons:</p> <p>7.3.1 In terms of Section 19(2) of the Postal Services Act, every licence holder must at a prescribed time, pay to the Regulatory the licence fee.</p> <p>7.3.2 A licence holder who fails to pay the licence fee contemplated in subsection (2) on the due date is liable to pay a penalty in the prescribed amount in addition to the licence fee.</p>	<p><b>The recommendation was approved by Council.</b></p>
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